

No. 10493

United States
Circuit Court of Appeals

For the Ninth Circuit.

STATE OF WASHINGTON and EQUITABLE LIFE INSUR-
ANCE COMPANY OF IOWA,

Appellants,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED. OGLESBY
and PHIL ISLEY, Constituting the Board of Supervisors
of Maricopa County, Arizona; SIDNEY P. OSBORN, Gov-
ernor, ANA FROHMILLER, State Auditor, and JIM
BRUSH, State Treasurer, Constituting the Loan Commis-
sioners of the State of Arizona; JIM BRUSH, State Treas-
urer, and ANA FROHMILLER, State Auditor of the
State of Arizona,

Appellees.

Transcript of Record

Upon Appeal from the District Court of the United States
for the District of Arizona

FILED

AUG - 5 1943

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MARICOPA COUNTY; JOHN A. FOOTE, ED. OGLESBY and PHIL ISLEY, Constituting the Board of Supervisors of Maricopa County, Arizona; SIDNEY P. OSBORN, Governor, ANA FROHMILLER, State Auditor, and JIM BRUSH, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; JIM BRUSH, State Treasurer, and ANA FROHMILLER, State Auditor of the State of Arizona,

Appellees.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Affidavit of Earl Anderson in Support of Motion for Summary Judgment.....	128
Affidavit of J. L. Gust in Opposition to Motion for Summary Judgment with Certified Copies of Acts of First Legislature of Arizona Attached Thereto	134
Affidavit of Leslie C. Hardy in Support of Motion for Summary Judgment.....	85
Exhibit B—Minutes of a Meeting of the Loan Commissioners of the State of Arizona	114
Exhibit C—Brief of Gust, Rosenfeld, Divelbess, Robinette and Coolidge, as Amici Curiae	95
Amended Answer of Defendants to Amended Complaint	67
Amended Complaint	3
A—Form of Bond, State of Arizona, County of Maricopa, Highway Bond, Election of May 17, 1919.....	59
B—Form of Bond, Election of Dec. 31, 1920	63

	Index	Page
Appeal:		
Bond on		231
Certificate of Clerk to Transcript of Record on		244
Designation of Additional Record on (DC)		242
Designation of Record on (DC).....		240
Notice of		229
Statement of Points Upon Which Plain- tiffs Will Rely for a Reversal of Judg- ment (DC)		233
Statement of Points on Which Appellants Will Rely on Appeal and Designation of Record on (CCA).....		248
Stipulation Concerning Transcript of Rec- ord on		246
Bond on Appeal.....		231
Certificate of Clerk to Transcript of Record on Appeal		244
Complaint, Amended		3
Designations of Record:		
Appellants' (CCA)		248
Defendants' Additional (DC).....		242
Plaintiffs' (DC)		240

Index

Page

Judgment:

Summary—Signed by Court and Filed... 221

Summary (Final) as Entered by Clerk... 223

Exhibit, Plaintiffs' No. 1—Petition for Writ
of Mandamus 167

Minute Entries:

May 17, 1943—Hearing on Motions..... 218

May 21, 1943—Order Granting Motion for
Summary Judgment 220June 8, 1943—Order Denying Request for
Findings of Fact, etc..... 228

Motion of Defendants for Summary Judgment 83

Affidavit of Earl Anderson in Support
Thereof 128Affidavit of J. L. Gust in Opposition
Thereof 134Affidavit of Leslie C. Hardy in Support
Thereof 85

Minute Entries Thereon.....218, 220

Notice Thereof 79

Names and Addresses of Attorneys of Record 1

Notice of Appeal..... 229

Index	Page
Order Denying Request for Findings of Fact, etc.	228
Order Granting Motion for Summary Judgment	220
Petition for Writ of Mandamus (Plaintiffs' Exhibit No. 1).....	167
Request of Plaintiffs for Findings of Fact and Conclusions of Law.....	225
Memorandum in Support of.....	226
Minute Entry Thereon.....	228
Notice Thereof	224
Statement of Points by Plaintiffs Upon Which They Rely for Reversal of Judgment (DC)	233
Statement of Points on Which Appellants Intend to Rely on Appeal and Designation of Record (CCA)	248
Stipulation Concerning Transcript of Record on Appeal (CCA)	246
Summary Judgment Signed by the Court and Filed	221
Summary (Final) Judgment as Entered by Clerk	223
Clerk's Notation Thereof in Civil Docket.	224

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*Page numbering appearing at foot of page of original certified Transcript of Record.

In the United States District Court
For the District of Arizona

No. Civil—379—Phoenix.

STATE OF WASHINGTON and EQUITABLE
LIFE INSURANCE COMPANY OF IOWA,
Plaintiffs,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED.
OGLESBY and PHIL ISLEY, Constituting
the Board of Supervisors of Maricopa County,
Arizona; SIDNEY P. OSBORN, Governor,
ANA FROHMILLER, State Auditor, and JIM
BRUSH, State Treasurer, Constituting the
Loan Commissioners of the State of Arizona;
JIM BRUSH, State Treasurer, and ANA
FROHMILLER, State Auditor of the State of
Arizona,

Defendants.

AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT DECLARING THAT CERTAIN
BONDS OF MARICOPA COUNTY ARE
NOT SUBJECT TO CALL BEFORE THEIR
DUE DATE

Come now the State of Washington and Equitable
Life Insurance Company of Iowa, the plaintiffs,
and for cause of action against the defendants, allege
as follows:

I.

That plaintiff, State of Washington, is a sovereign
state of the United States of America; that plaintiff

Equitable Life Insurance Company of Iowa, is a corporation organized under the insurance laws of the State of Iowa and having its principal place of business at Des Moines in said state, and is a citizen and resident of the State of Iowa. [47]

II.

That defendant, Maricopa County, is a county of the State of Arizona; that John A. Foote, Ed. Oglesby and Phil Isley constitute the Board of Supervisors of said Maricopa County; that Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Jim Brush, State Treasurer, constitute the Loan Commissioners of the State of Arizona; that defendant Jim Brush is the State Treasurer of the State of Arizona and Ana Frohmiller is the State Auditor of the State of Arizona; that the individual defendants above named are sued herein in their official capacity above set forth. That all of said individual defendants are citizens and residents of Arizona.

III.

That jurisdiction of the United States District Court For the District of Arizona is invoked in this suit first, upon the ground that this is a case arising under the Constitution and laws of the United States, and second, upon the ground that it is a case between a state and citizens of another state and between citizens of different states.

IV.

That the plaintiff, State of Washington, owns and holds a total of \$236,000.00 par value of the

two issues of Maricopa County Highway Bonds hereinafter described; that \$31,000.00 of said bonds are of the issue of 1919, bearing 5½% interest per annum, of which the numbers and due dates are as follows:

2,222-7 and 2,253-6 due June 15, 1943,
2,540-3 and 2,782 due June 15, 1945,
2,830, 2,849-50, 2918 and 2971-4 due June 15,
1946,
3,225-6 due June 15, 1947,
3511, 3550 and 3,586 due June 15, 1948.
3,944-5 and 3,966 due June 15, 1949;

That \$205,000.00 par value of said bonds are of the issues of 1921, bearing 6% interest per annum of which the num- [48] bers and due dates are as follows:

6,171 due January 15, 1944,
6,309-14, 6366-70, 6,384-90 and 6,485 due
January 15, 1945,
6,576-80, 6,661, 6,663-4, 6,667-70 and 6,800 due
January 15, 1946,
6,801-22, 7011-15, 7-016-25 due January 15,
1947,
7,106-20, 7,124-5, 7-151-70, 7-251-4, 7-301-5,
7,321-5 and 7,371-5 due January 15, 1948,
7,401-20, 7,451-5 due January 15, 1949,
7,786-95, 7,799—7,818 and 7,912 due January
15, 1950,
8,205-23, 8,294-6 and 8,400 due January 15,
1951.

That all of the aforesaid bonds are due and payable

as of the respective due dates above set forth without acceleration of maturity; that the difference between the value of the above mentioned bonds if defendant, Maricopa County, is legally bound to pay the agreed rate of the interest thereon until the respective due dates therein specified, as is contended by plaintiffs, and the value of said bonds if they are presently subject to call for redemption by said Maricopa County, as is contended by defendants, greatly exceeds the sum of Three Thousand (\$3,000.00) Dollars.

V.

That plaintiff, Equitable Life Insurance Company of Iowa, owns and holds a total of Ninety-one Thousand (\$91,000.00) Dollars par value of the 1921 issue of Maricopa County Highway Bonds, hereinafter described; that said bonds bear interest at the rate of six (6%) per cent per annum, and the numbers and due dates thereof are as follows:

6,116-6,153, inclusive, 6,200, 6,203-6,219 inclusive, amounting to \$56,000.00, due January 15, 1944,

6,919-6,943, inclusive, amounting to \$25,000.00, due January 15, 1947,

7,331-7,335, inclusive, 7,390-7,394, inclusive, amounting to \$10,000.00, due January 15, 1948.

That all of said bonds are due and payable as of the due dates above set forth without acceleration of maturity; that the difference between the value of the above mentioned [49] bonds of said last mentioned plaintiff, if defendant Maricopa County is

legally bound to pay the agreed rate of interest thereon until the respective due dates therein specified as is contended by plaintiffs, and the value of said bonds, if they are presently subject to call for redemption by said Maricopa County, as is contended by defendants, greatly exceeds the sum of Three Thousand (\$3,000.00) Dollars.

VI.

That at all times when any bonds herein mentioned as held by plaintiffs were voted, authorized, advertised for sale, sold, issued, paid for and delivered, the counties of the State of Arizona, of which defendant, Maricopa County, is one, were authorized and empowered to issue negotiable bonds under the terms and provisions of Chapter II, Title 52, Sections 5266 to 5285, Revised Statutes of Arizona for 1913; that said Chapter II, Title 52 among other things provided that if the proposed indebtedness to be created by said bonds would cause said county to become indebted in excess of four (4%) per cent of the value of taxable property in such county to be ascertained by the last assessment for State and County purposes previous to such proposed incurring of such indebtedness, said proposed bond issue should be submitted to the property taxpayers of the county, and said Chapter II, Title 52 contained the following specific provisions:

(1) In Section 5273, that in the call for election there shall be "set forth the aggregate amount of said bonds, the term thereof, the rate of interest to be paid thereon, when such interest shall be paid, the date of maturity of said bonds, or other evi-

dences of indebtedness and the purposes for which the money derived from the sale of such bonds or other evidence of indebtedness shall be expended.”

[50]

(2) In Section 5274 that said bonds “shall be signed and attested * * * by the Chairman and Clerk of the Board of Supervisors”, and further, that “said bonds shall be payable at a date not to exceed forty (40) years from the date of their issuance.”

(3) In Section 5275, that “said bonds shall be payable to bearer and coupons for the interest shall be attached to each of the said bonds.”

(4) In Section 5275, “that none of said bonds or other evidences of indebtedness shall be sold for a less amount than par with accrued interest”.

(5) In Section 5278, “and until all of said bonds or other evidences of indebtedness of such county are redeemed the board of supervisors of such county where such indebtedness is created under the provisions of this chapter * * * is authorized, and it shall be its duty, to levy and cause to be collected a tax in addition to the amount of taxes which now or hereafter may be authorized by law for state and county purposes at the same time and in the same manner as other taxes are levied and collected by such county * * * upon all taxable property in such county * * * sufficient to pay the interest on all bonds issued when such interest shall become due, and said tax when collected shall constitute a fund for the payment of interest on said bonds

or other evidences of indebtedness and shall be called 'Interest Fund'."

(6) In Section 5279, "The Board of Supervisors of any county wherein any indebtedness shall be created under the provisions of this chapter * * * shall also, and in addition to the taxes for state and county purposes, * * * and the tax hereinabove provided to be levied for the payment of interest on such bonds or other evidences of indebtedness, levy a tax [51] for the purpose of redeeming said bonds or other evidence of indebtedness when the same shall mature as specified in the order and call for election hereinbefore in this chapter provided to be made, and all money derived from the levy of the tax in this section provided for when collected shall constitute a fund and shall be called the 'Redemption Fund' and shall be used for the redemption of said bonds or other evidences of indebtedness according to the number of their issue. The tax in this section provided to be levied shall be levied annually so as to provide a fund for the redemption of such bonds or other evidences of indebtedness when the same shall mature."

(7) In Section 5281, "When any bonds or other evidences of indebtedness created under the provisions of this chapter shall mature it shall be the duty of the county treasurer * * * to give notice for four weeks in some newspaper published in the county in which such bonds or other evidences of indebtedness shall have been issued, of the intention of such county * * * to redeem such bonds, stating the amount thereof, and such redemption

shall be made by the county * * * and all said bonds or evidences of indebtedness shall cease to draw interest at the expiration of four weeks after the date of said notice, and if said bonds so noticed for redemption shall not be presented for redemption within three months from the date of such notice said county treasurer * * * shall apply said money to the redemption of the bonds next in the order of the number of their issue."

(8) In Section 5281, "The Board of Supervisors * * * issuing bonds or other evidences of indebtedness under provisions of this chapter shall, by resolution entered upon its minutes prior to the offering for sale of said bonds or other evidences of indebtedness, and within a period of fifteen (15) [52] days from the canvassing of the vote of the election herein provided for, prepare a form of bond which shall substantially conform to the description of said bonds mentioned in the order required by this chapter published and recorded."

VII.

That there was no provision whatsoever in said Chapter II, Title 52, Arizona Revised Statutes of 1913, nor any statute, law, custom or practice of the State of Arizona at the date of the issuance of the bonds hereinabove mentioned, authorizing or contemplating the calling of said bonds before their maturity dates, and that the only provision of the statutes, laws, customs or practice of the State of Arizona and the counties and other legal subdivisions thereof at the time of the issuance of the

above mentioned bonds were the express provisions of the statute above set forth authorizing a redemption of said bonds after the maturity dates thereof.

VIII.

That in the year 1917 there was passed and became a law of the State of Arizona, Chapter 31 of Arizona Session Laws of 1917, which provides for the creation of county highway commissions and expressly authorizes the issuance of bonds for the construction and improvement of highways of the county. Said section provides that bonds might be issued and sold as other county bonds. That said Chapter 31 above mentioned was amended on March 17th, 1919, by Chapter 63 of the Session Laws of 1919, and on March 19th, 1919, by Chapter 101 of the Session Laws of 1919, and on March 20th, 1919 by Chapter 121 of the Session Laws of 1919. That none of such amendments made any change in said Chapter 31 material to the issues of this case.

IX.

That pursuant to said Chapter 31 of the Session Laws [53] of 1917, the Board of Supervisors of defendant, Maricopa County, on April 10th, 1919, adopted an order calling an election of the property taxpayers of said county to be held May 17th, 1919, to determine whether the bonds of said county in the sum of Four Million (\$4,000,000.00) Dollars, should be issued and sold for the purpose of constructing and improving hard surfaced highways in said county, and said resolution specified that

the rate of interest of said proposed bonds should be five and one-half ($5\frac{1}{2}\%$) per cent per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

“\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 13 years and to mature on June 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 14 years and to mature June 15, 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, 1936;

\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15th, 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, 1941;

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, 1942;

\$200,000.00 thereof to run for a term of 24 years and to [54] mature on June 15, 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature on June 15, 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature June 15, 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature June 15, 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature June 15, 1948; and

\$300,000.00 thereof to run for a term of 30 years and to mature June 15, 1949”.

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for election and contained the description of said bonds as above set forth including the terms and dates of maturity thereof.

X.

That said bonds were approved by the majority of the property taxpayers of the county at said election, and thereafter, on June 2nd, 1919, the said Board of Supervisors of said county canvassed the returns of said election and embodied the facts determined upon said canvass in a certificate and filed and recorded the same in the office of the County Recorder of said county, and in said certificate it was declared as follows:

“That the rate of interest upon said proposed

bonds is to be five and one-half ($5\frac{1}{2}\%$) per cent per anum, payable semi-annually and the terms and dates of maturity of said bonds to be as follows, to-wit:

\$100,000.00 thereof to run for a term of 11 years and to mature on June 15, A. D. 1930;

\$100,000.00 thereof to run for a term of 12 years and to mature on June 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 13 years to mature on June 15, A. D. 1932; [55]

\$100,000.00 thereof to run for a term of 14 years and to mature on June 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 15 years and to mature on June 15, A. D. 1934;

\$200,000.00 thereof to run for a term of 16 years and to mature on June 15, A. D. 1935;

\$200,000.00 thereof to run for a term of 17 years and to mature on June 15, A. D. 1936;

\$200,000.00 thereof to run for a term of 18 years and to mature on June 15, A. D. 1937;

\$200,000.00 thereof to run for a term of 19 years and to mature on June 15, A. D. 1938;

\$200,000.00 thereof to run for a term of 20 years and to mature on June 15, A. D. 1939;

\$200,000.00 thereof to run for a term of 21 years and to mature on June 15, A. D. 1940;

\$200,000.00 thereof to run for a term of 22 years and to mature on June 15, A. D. 1941;

\$200,000.00 thereof to run for a term of 23 years and to mature on June 15, A. D. 1942;

\$200,000.00 thereof to run for a term of 24 years and to mature on June 15, A. D. 1943;

\$200,000.00 thereof to run for a term of 25 years and to mature on June 15, A. D. 1944;

\$300,000.00 thereof to run for a term of 26 years and to mature June 15, A. D. 1945;

\$300,000.00 thereof to run for a term of 27 years and to mature on June 15, A. D. 1946;

\$300,000.00 thereof to run for a term of 28 years and to mature on June 15, A. D. 1947;

\$300,000.00 thereof to run for a term of 29 years and to mature on June 15, A. D. 1948; and

\$300,000.00 thereof to run for a term of 30 years and to mature on June 15, A. D. 1949.”

XI.

That thereafter, on June 4th, 1919, the said Board of Supervisors adopted a resolution preparing and fixing the form of said bonds and in said resolution declared that “The bonds of the County of Maricopa to be issued and sold pursuant to [56] the county road bond election held May 17, 1919 in the total amount of Four Million (\$4,000,000.00) Dollars, shall be of the denomination of One Thousand (\$1,000.00) Dollars each; shall be Four Thousand (4,000) in number, shall be numbered from one (1) to four thousand (4,000) inclusive; shall be each dated June 15, 1919; shall each bear interest from date thereof at the rate of five and one-half (5½%) per cent per annum, payable semi-annually on the 15th day of June and December of each year at the office of the County Treasurer of said

County of Maricopa; and shall mature upon the respective dates specified in the resolution of the Board of Supervisors dated April 10, 1919, calling the aforesaid election, and on the ballots used by the electors at said election and in the certificate of the Board of Supervisors heretofore and on June 2, 1919 filed in the office of the County Recorder of said Maricopa County; and shall each and all strictly conform in their tenor and terms to the aforesaid resolution calling said road bond election''. That the form of bond thereafter set forth in said resolution is attached hereto marked "Exhibit A" and made a part hereof.

That said resolution further provided "That each of the said series of four thousand (\$4,000.00). bonds shall have attached thereto such number of semi-annual interest coupons in the sum of twenty-seven dollars and fifty cents (\$27.50) each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of [57] 19...., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Twenty-seven dollars and fifty cents in gold coin of the United States, for

the semi-annual interest on its highway bond numbered

Election of May 17, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors of Maricopa County, State of Arizona.

Attest:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors of Maricopa County, State of Arizona.

\$27.50 Coupon Number”

XII.

That no recital in said bonds or coupons nor any statement therein contained, gave any indication whatsoever that said bonds or any of them were subject to call for redemption before their maturity dates, nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom, providing for the call of said bonds for redemption before their respective due dates, and no such statutes, law, practice or custom ever existed or was suggested in the state of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

XIII.

That thereafter said Board of Supervisors caused to be published a notice inviting proposals for the purchase of said bonds, and said notice contained the following provision:

“Said bonds to be serial bonds, part of which shall mature on the 15th day of June of each year from the year 1930 to the year 1949, both inclusive, as more specifically described in that certificate of the Board of Supervisors relating to said bonds recorded in the office of the County Recorder of Maricopa County on June 2, 1919, in Book 19 of Miscellaneous Records, at page 357.” [58]

That the certificate referred to was so recorded in the County Recorder’s office and gave the dates of maturity of said bonds as set forth in the order for said bonds hereinabove set forth.

XIV.

That bids for said bonds were received and the bid of Graves, Blanchet and Thornburgh and associates, was accepted. Said bid contained the following provisions:

“For the Four Million Dollars par value legally issued Highway Bonds of Maricopa County, Arizona, complying in all respects with the description of same as contained in your official advertisement of sale, and to be delivered to us on the basis of delayed deliveries as outlined in your Official Notice of Sale, we will pay par and accrued interest to date of deliveries of the bonds, and in addition thereto a premium of Thirty-two Thousand Five Hundred (\$32,500.00) Dollars.”

XV. .

That after the said bid was accepted, and on the 9th day of July, 1919, defendant Maricopa County, entered into a formal written contract with the bidders, providing for the sale and purchase of said bonds and that in said contract said Maricopa County expressly covenanted and agreed to sell to the purchasers and the purchasers covenanted and agreed to purchase from said Maricopa County, "the highway bonds of said Maricopa County authorized to be issued by the election held May 17th, 1919, in the amount of \$4,000,000.00 par value; said bonds to comply in all respects with the description of the same as contained in the 'Notice Inviting Proposals hereinabove set forth'." That said contract was regularly executed by the Chairman and Clerk of the Board of Supervisors of said Maricopa County by authority of a resolution adopted by said Board of Supervisors on July 9th, 1919.

XVI.

That after all of said issue of bonds had been executed [59] upon the form set forth in "Exhibit A" hereto attached, and the bid of the purchasers therefor had been accepted, and the formal contract for the purchase thereof between said Maricopa County and the purchasers had been executed, and after three thousand of said bonds had been delivered to the purchasers and one thousand of said bonds remained to be delivered to said purchasers the legislature of the State of Arizona adopted Chapter 54 of the Sessions Laws of 1921,

ratifying, approving and validating said bonds and the sale thereof, and in said Act said legislature declared, "that the bonds of the County of Maricopa in the sum of Four Million (\$4,000,000.00) Dollars, authorized by the election of the property taxpayers of said county held May 17, 1919, for the purpose of providing funds for the construction and improvement of certain portions of the public highway of Maricopa County and the contract for the sale of such bonds entered into by the Board of Supervisors of said Maricopa County, with Graves, Blanchett, Thornburgh, and associates, on the 9th day of July, 1919, are hereby ratified, approved and declared valid", and in said Act said legislature further declared that, "all acts and parts of acts in conflict with the provisions of this act are hereby repealed".

XVII.

That after the ratification of said bonds by said Chapter 54 of the Session Laws of 1921, they sold readily on the open market and thereafter the plaintiffs, in reliance upon the proceedings of said Board of Supervisors hereinabove set forth, and the maturity dates of said bonds as set forth in said proceedings, and said bonds and the covenants of said Maricopa County to pay interest on said bonds to the maturity dates thereof as specified in said bonds, and the above mentioned Act of the legislature of the State of Arizona, ratifying [60] and approving said bonds in the form authorized as above set forth, and the Contract and Agreement entered into by said Maricopa

County and the purchasers of said bonds each of the plaintiffs purchased the bonds now owned and held by it, and paid a large premium for the right to collect interest on said bonds at the rate therein specified until the respective maturity dates specified in said bonds.

XVIII.

That pursuant to said Chapter 31 of the Session Laws of 1917 and amendments thereto the Board of Supervisors of defendant Maricopa County, on November 30, 1920, adopted an order calling an election of the property taxpayers of said county to be held December 31, 1920, to determine whether the bonds of said county in the additional sum of \$4,500,000.00 should be issued and sold for the purpose of constructing and improving hard surfaced highways in said county, and said resolution specified that the rate of interest of said proposed bonds should be 6% per annum, payable semi-annually, and the terms and dates of maturity of said bonds should be as follows:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A. D. 1931,

\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A. D. 1932,

\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A. D. 1933,

\$100,000.00 thereof to run for a term of 13 years and to mature January 15, 1934.

\$100,000.00 thereof to run for a term of 14 years and to mature on January 15, 1935,

\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936,

\$200,000.00 thereof to run for a term of 16 years and to mature on January 15, 1937,

\$200,000.00 thereof to run for a term of 17 years and to mature on January 15, 1938, [61]

\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939,

\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940,

\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941,

\$200,000.00 thereof run for a term of 21 years and to mature on January 15, 1942,

\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1943,

\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944,

\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945,

\$300,000.00 thereof to run for a term of 25 years and to mature on January 15, 1946,

\$300,000.00 thereof to run for a term of 26 years and to mature January 15, 1947,

\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948,

\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949,

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950, and

\$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951.

That notice of said election was given by posting and publication as provided by law and that said notice so posted and published was the order for election and contained the description of said bonds as above set forth, including the terms and dates of maturity thereof.

XIX.

That said bonds were approved by the majority of the property taxpayers of the county at said election, and thereafter, on January 20, 1921, the said Board of Supervisors of said county canvassed the returns of said election and declared said bond issue to have been approved by said taxpayers and [62] thereafter, on November 2, 1921, said Board of Supervisors embodied the facts determined from said canvass in a certificate and filed and recorded the same in the office of the county recorder of said county, and in said certificate it was declared as follows:

“The rate of interest upon the said proposed bonds shall be six percentum (6%) per annum, payable semi-annually and the terms and dates of maturity of said bonds shall be as follows, to-wit:

\$100,000.00 thereof to run for a term of 10 years and to mature on January 15, A. D. 1931;

\$100,000.00 thereof to run for a term of 11 years and to mature on January 15, A. D. 1932;

\$100,000.00 thereof to run for a term of 12 years and to mature on January 15, A. D. 1933;

\$100,000.00 thereof to run for a term of 13 years and to mature on January 15, 1934;

\$100,000.00 thereof to run for a term of 14 years and to mature on January 15, 1935;

\$200,000.00 thereof to run for a term of 15 years and to mature on January 15, 1936;

\$200,000.00 thereof to run for a term of 16 years and to mature on January 15, 1937;

\$200,000.00 thereof to run for a term of 17 years and to mature on January 15, 1938;

\$200,000.00 thereof to run for a term of 18 years and to mature on January 15, 1939;

\$200,000.00 thereof to run for a term of 19 years and to mature on January 15, 1940;

\$200,000.00 thereof to run for a term of 20 years and to mature on January 15, 1941;

\$200,000.00 thereof to run for a term of 21 years and to mature on January 15, 1942;

\$200,000.00 thereof to run for a term of 22 years and to mature on January 15, 1943;

\$200,000.00 thereof to run for a term of 23 years and to mature on January 15, 1944;

\$200,000.00 thereof to run for a term of 24 years and to mature on January 15, 1945;

\$300,000.00 thereof to run for a term of 25 years and to mature on January 15, 1946; [63]

\$300,000.00 thereof to run for a term of 26 years and to mature January 15, 1947;

\$300,000.00 thereof to run for a term of 27 years and to mature January 15, 1948;

\$300,000.00 thereof to run for a term of 28 years and to mature January 15, 1949;

\$300,000.00 thereof to run for a term of 29 years and to mature January 15, 1950; and

\$500,000.00 thereof to run for a term of 30 years and to mature January 15, 1951.”

XX.

That thereafter, on the 2nd day of November, 1921, the said Board of Supervisors adopted a resolution preparing and fixing the form of said bonds and in said resolution declared that:

“The bonds of the County of Maricopa to be issued and sold pursuant to the County Road Bond Election held December 31, 1920, in the total amount of Four Million Five Hundred Thousand (\$4,500,000.00) Dollars, shall be in the denomination of One Thousand (\$1,000.00) Dollars each, shall be four thousand five hundred (4,500) in number, shall be numbered from 4,001 to 8,500, inclusive, shall each be dated January 15, 1921, shall each bear interest from the date thereof at the rate of 6% per annum, payable semi-annually on the 15th day of January and July in each year at the office of the County Treasurer of the said County of Maricopa, State of Arizona, and shall mature upon the respective dates specified in the resolution of the Board of Supervisors, dated the 16th day of August, calling for the aforesaid election, and on the ballots for the electors in the said election and in the certificate of the Board of Supervisors heretofore on the 8th day of November, 1921, filed in the office of the County Recorder of Maricopa County, and each and all shall strictly conform in tenor and terms to the aforesaid resolution calling said Road Bond Election, the ballots used by the electors at said election, and the aforesaid certificate

of the Board of Supervisors recorded on November 8, 1921”.

That the form of bond thereafter set forth in said Resolution is attached hereto, marked “Exhibit B”, and made a part hereof. [64]

That said resolution further provided, “That each of the said series of four thousand five hundred (4,500) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty Dollars (\$30.00) each, and payable on the 15th. day of January and the 15th. day of July of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (except changes as to dates of payments):

“The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th. day of January, 19....., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty Dollars (\$30.00) in gold coin of the United States, for the semi-annual interest on its highway bond numbered.....

Election of December 31st, 1920.

Chairman of the Board of Supervisors of Maricopa County, State of Arizona.

Attest:

Clerk of the Board of Supervisors of Maricopa County, State of Arizona.

\$30.00

Coupon Number.....”

XXI.

That no recital in said bonds or coupons or any statement therein contained gave any indication whatsoever that said bonds or any of them were subject to call for redemption before their maturity dates nor did any recital or statement in said bonds or coupons call attention to any statute, law, practice or custom providing for the call of said bonds for [65] redemption before their respective due dates and no such statute, law, practice or custom ever existed or was suggested in the State of Arizona prior to the attempt to call such bonds for redemption in the year 1942.

XXII.

That thereafter said Board of Supervisors caused to be published a notice inviting proposals for the purchase of said bonds and said notice contained the following provision:

“Said bonds to be serial bonds, part of which will mature on the 15th day of January of each year from the year 1931 to the year 1951, both inclusive, as more specifically prescribed in that certificate of the Board of Supervisors relating to the said bonds, recorded in the office of the County Recorder of said Maricopa County on November 8, 1921, in Book 24, page 345 of Miscellaneous Records”;

That the certificate referred to was so recorded in the County Recorder's office and gave the dates of the maturity of said bonds as set forth in the order for said bonds hereinbefore set forth.

XXIII.

That bids for said bonds were received and the bid of Harris Trust & Savings Bank, William R. Compton Company, Northern Trust Company, Union Trust Company, and Bankers Trust Company, of Denver, was accepted. Said bid was made for the bonds containing the terms of the bonds as set forth in the form attached hereto, marked "Exhibit B", and for the maturities set forth in the proceedings of said Board of Supervisors for the issuance of said bonds as hereinabove set forth, and the amount of said bid was Four Million Eight Hundred Thousand, One Hundred Fifty (\$4,800,150.00) Dollars, cash, for the four million five hundred thousand (\$4,500,000.00) Dollars of bonds.

XXIV.

That after the election of the property taxpayers approv- [66] ing issuance of said Four Million Five Hundred Thousand (\$4,500,000.00) Dollars of bonds, and after the canvass of the results of said election, and after the determination of the maturities of said bonds as set forth in the order for election, and the call for said election, and as approved by the property taxpayers at said election and prior to the notice inviting proposals for the sale of said bonds, the legislature of the State of Arizona passed Chapter 86 of the Session Laws of 1921 ratifying, approving and validating the said bonds as authorized, to be issued and sold by the Board of Supervisors of said county at an election by the property

taxpayers of said county held December 31, 1920, and that in and by said act the legislature of the State of Arizona declared that the said election "was a valid election and conferred upon the Board of Supervisors of said county the power and authority to issue and sell said bonds and that said bonds when issued and sold by said Board of Supervisors are hereby declared to be free from any defect or invalidity by reason of any act or omission of said Board of Supervisors in calling and holding said election or preparatory thereto"; that said act of the legislature became a law on or about June 14, 1921, and before said bonds were offered for sale.

XXV.

That after said bonds were delivered to the said original purchasers thereof as hereinabove set forth they entered upon the market as negotiable securities and were sold on the open market to various purchasers and the bonds of said issue hereinbefore described as now owned and held by the plaintiffs were purchased by said plaintiffs in reliance upon the said proceedings of the Board of Supervisors fixing definite maturity dates for said bonds and providing for the payment of interest [67] at the rate specified in said bonds until the due dates thereof and in reliance on the act of the legislature of the State of Arizona above set forth, ratifying and approving said bonds and declaring the same free from any defect, and that by reason of reliance of the plaintiffs upon said provisions in said proceedings of the public records of said Mari-

copa County, and the act of the legislature of the State of Arizona approving and ratifying said bonds, each of the plaintiffs paid a large premium for the right to collect interest on said bonds at the rate specified therein until the respective maturity dates specified in said bonds.

XXVI.

That after the issuance and delivery of said last issue of bonds in the year 1921, defendant, Maricopa County, regularly levied and collected taxes for each of the issues of bonds above set forth and made the semi-annual payments of interest out of the interest fund and retired those bonds that became due and payable on their respective due dates and at no time made any claim or assertion of any right to retire any of said bonds before their due dates until the year 1942; that in the year 1942 the Board of Supervisors of said Maricopa County adopted a resolution demanding that the State Loan Commissioners of the State of Arizona issue refunding bonds for the purpose of redeeming and refunding all of the bonds of the two issues above mentioned, including all bonds above described as owned and held by the plaintiffs, notwithstanding the fact that said bonds were not yet due and payable and contained no provisions for retirement or redemption thereof before their respective due dates; that said Loan Commissioners of the State of Arizona refused to take any proceedings for such refunding, and, thereupon, the said Board of

Supervisors of Maricopa County, Arizona, [68] brought a mandamus proceeding in the Supreme Court of the State of Arizona to compel the State Loan Commissioners to refund and redeem said bonds under the provisions of Article 4 of Title 10, of Arizona Code Annotated, 1939, Sections 10-401 to 10-411; that in said mandamus proceedings to which neither of the plaintiffs nor any of the holders of bonds of either of the issues hereinabove described were parties, the Supreme Court of Arizona ordered the said Loan Commissioners to proceed with said refunding of said bonds and in said opinion stated that said Article 4 of Title 10, Arizona Code Annotated, 1939, was applicable to the redemption and refunding of the issues of bonds of which the bonds herein described as held by the plaintiffs are a part; that thereafter, the said Board of Supervisors again demanded that the said Loan Commissioners proceed with the refunding of said bonds and that said Loan Commissioners thereupon adopted a resolution calling for bids for bonds to refund the whole remainder of the two issues hereinabove described remaining outstanding, including all of the bonds owned and held by the plaintiffs as hereinabove set forth; that in response to said call for bids only one bid was received and that said Loan Commissioners, with the approval of said defendant, Maricopa County, accepted said bid and that thereupon the said bidder requested a further proceeding in the Supreme Court of Arizona to establish the legal validity of the said refunding bonds and to determine what notice must be given to call

the outstanding bonds and stop the payment of interest thereon. Thereupon the said Loan Commissioners, with the approval of said Board of Supervisors of Maricopa County, refused to issue said bonds to the purchasers upon the ground that the legality of the same was doubtful, and upon the further ground that the bonds to be refunded were not subject to call [69] for redemption before their respective due dates and that the same were not due; that thereupon, said Maricopa County brought a further mandamus proceeding in the Supreme Court of the State of Arizona to compel the State Loan Commissioners to issue and deliver said refunding bonds. That said Maricopa County was the sole plaintiff, and Sidney P. Osborn, as Governor, Ana Frohmiller, as State Auditor, and J. D. Brush, as State Treasurer of the State of Arizona, constituting the Loan Commissioners of the State of Arizona, were the only defendants, and that said suit was filed by said Maricopa County at the request of the bidders for said bonds, and under the direction of the attorneys of the bidders, and the purpose and object of said suit was not to grant a hearing upon or consideration of the rights of the holders of the bonds proposed to be refunded, but was to obtain a declaration from the Supreme Court of the State of Arizona as to the validity of the refunding bonds proposed to be purchased by the bidders, and that the questions submitted for consideration to the said court for determination by the defendants were limited to the following:

- (1) That no benefit or profit would result to

the county from the issuance of the refunding bonds by reason of the fact that the outstanding bonds were not callable, and payment of the interest thereon would not cease until they became due according to their terms.

(2) That there was no form or method of notice provided for calling the outstanding bonds.

(3) That the maturities of the new bonds proposed to be issued were not in accordance with the statute providing for the issuance thereof.

(4) That no authority existed in the statute for the levy of sufficient taxes to retire the proposed new bonds ac- [70] cording to their terms.

(5) That the new refunding bonds would be subject to refunding the day after their issuance, and

(6) That the law required the manual and personal signature of the Treasurer to all the coupons, and this was not practicable, and there was no authority in the act for affixing the facsimile signature of the Treasurer.

That the question of the callability of the outstanding bonds was submitted to said court wholly upon the decision of said court in the prior mandamus suit, and no reconsideration of said prior decision was made or requested, and that there was not submitted to said Supreme Court of the State of Arizona, and never has been submitted to said court the fact that said Chapter I, Title 52, Revised Statutes of 1913, was a reenactment of the old territorial statute, and therefore, limited in its effect to the interpretation placed upon said statute by the territorial courts, nor were there submitted

to said court the facts hereinafter setforth showing that said Revised Statutes of 1913 were a compiled, and not a revised code, and that Chapter II, Title 52, Revised Statutes of 1913 was a later enactment than Chapter I, Title 52, nor was there called to the attention of said court Section 5553, Revised Statutes of 1913, providing that a subsequent statute repeals a prior statute upon the same subject. Nor was it called to the attention of said court that said Chapter I, Title 52, Revised Statutes of 1913, made county, municipal and school district bonds, if refunded by the State Loan Commissioners, obligations of the state in violation of the constitutional provision limiting indebtedness of the state. Nor was it called to the attention of said court that subsequent acts of the legislature indicated a policy of limiting refunding to optional bonds. Nor was the fact that Article IV, [71] Chapter 60, of the Revised Code of 1928, was a new enactment and made a material change in the law with reference to the questions above mentioned, called to the attention of said court.

XXVII.

That notwithstanding the fact that the bid for the bonds proposed to be issued by the State Loan Commissioners for the refunding bonds of the plaintiff, and other bonds of said issues outstanding, is practically par for a $2\frac{3}{4}\%$ interest rate, the actual difference between the rates of 6% and $5\frac{1}{2}\%$ carried by the bonds of the plaintiffs which are sought to be redeemed, and the current rate of like bonds is much greater, the current rate of interest on such

bonds being approximately 2¼%. The difference in said rate and the rate at which the proposed bonds were awarded to the bidder being due to the fact that there was only one bid other prospective bond purchasers having refrained from bidding because of the doubt as to the validity of said refunding bonds arising from the fact that if the bonds proposed to be redeemed remain outstanding the new issue of bonds will create a new indebtedness of the county without the vote of the real property taxpayers, in violation of the constitution and statutes of the state of Arizona. That the said refunding proceedings hereinabove mentioned proposed by the State Loan Commissioners at the demand of the Board of Supervisors of Maricopa County, is a plan or device to obtain the redemption of the outstanding issues of bonds held by the plaintiffs and other like bondholders, and to deprive said bondholders of the rate of interest which the county has agreed to pay, and thereby effect a saving to said county at the expense of said bondholders; that none of the parties to said mandamus proceedings were interested in defending the holders of said outstanding bonds, and that [72] neither of the said mandamus proceedings in the Supreme Court of Arizona hereinabove mentioned has been adequately or properly defended in said court, as all parties to said proceedings were desirous of causing the refunding and redemption of the bonds of the outstanding issues, including the bonds held by the plaintiffs. That most of the facts and law upon which the rights of the plaintiffs in this suit

are based, have not been presented to said Supreme Court of Arizona in either of the mandamus proceedings herein mentioned.

XXVIII.

That the defendants have entered into a contract with the bidders for said proposed refunding bonds, granting to said bidders the right to accept said refunding bonds at the price stated in their said bid whenever they elect so to do. And said bidders will accept and pay for said refunding bonds as soon as said bonds are ready for delivery, and the attorneys for said bidders will render their approving opinion.

XXIX.

That if the outstanding bonds of the plaintiff are permitted to be called and the payment of interest thereon to be terminated as of the present date, the loss to each of the plaintiffs caused by such redemption will greatly exceed the sum or value of Three Thousand (\$3,000.00) Dollars.

XXX.

That the said bonds owned by the plaintiffs are proposed to be refunded by the defendants by virtue of the provisions of Article IV of Chapter 10, of the Arizona Annotated Code, 1939. That said Article IV, Chapter 10 first became a law of the state of Arizona as a new enactment, and not as a re-enactment or revision of an existing statute, as Article IV of Chapter 60, of Arizona Revised Code of 1928, on the first [73] day of July, 1929,

some seven or eight years after the issuance of plaintiffs' bonds. That said statute is the only authority existing in the law of Arizona authorizing the refunding of county indebtedness by the State Loan Commissioners. That Section 2654 of said Article IV, Chapter 60, Revised Code of Arizona, 1928, reads as follows:

"Sec. 2654. County or municipal bonds by state loan commissioners. The boards of supervisors of the counties and the municipal and school authorities, shall report to the state loan commissioners the bonded and outstanding indebtedness of the county, municipality or school district, and, upon the demand of said authorities, the commissioners shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness, and issue bonds of the state for any indebtedness allowed by law to be incurred by such county, municipality or school district. Such bonds shall be issued upon the faith and credit of the state only to the extent that it will cause to be levied and collected taxes for the payment of the principal and interest for such bonds, and pay the same when such bonds have been issued. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal and interest of such bonds issued for such county, municipality, or school district, in the same manner as it herein provided for the pay-

ment of the principal and interest of state indebtedness."

That the above section provides that the Loan Commissioners upon demand of the Board of Supervisors, "shall provide for the redeeming or refunding of such indebtedness in the same manner as other state indebtedness and issue bonds of the state for any indebtedness allowed by law to be incurred by such county, municipality or school district". The provision for refunding of state indebtedness referred to in said section is found in Section 2646 of said Article IV, which provides that the Loan Commissioners "shall provide for the payment of the state indebtedness due and to become due, now existing or [74] hereafter authorized for the purpose of paying, redeeming and refunding all or any part of the principal and interest of the same from time to time, issue negotiable coupon bonds of the state when they can be issued at a lower rate of interest than previously paid, or when to the profit and benefit of the state"; that the defendant, Maricopa County, contends that the bonds of the plaintiff and other like bonds may be redeemed and refunded under the provisions of Sections 2654 and 2646, without impairing the obligation of any contract between said Maricopa County and the holders of said bonds, for the reason that a similar right for the redemption and refunding of said bonds existed at the time of the issuance of said bonds under the provisions of Chapter I of Title 52, Sections 5251 and 5265 of Revised Statutes of Arizona, 1913, which were in force when said

bonds of the plaintiffs were issued; that said contention of defendant, Maricopa County, is not well founded for the following reasons:

1. If there existed any right to redeem either of the bond issues above mentioned by virtue of any statute or law in force when said bonds were issued such right of redemption was excluded from application to said bond issues and each of them by the Acts of the legislature, (Chapters 54 and 86, Session Laws of 1921) approving and ratifying said bonds after the form of the bonds had been adopted and the covenants therein to pay the interests to definite maturity dates had become effective and made a matter of public record.

2. Chapter I of Title 52, Arizona Revised Statutes of 1913, in so far as is material in this connection, was a re-enactment of Chapter 29 of Arizona Session Laws of 1912, First Special Session, and said Chapter 29 of Arizona Session Laws of 1912, First Special Session, was a reenactment of the Act [75] of Congress of June 25, 1890, Chapter 614, 51st Congress, First Session, as amended by the Act of Congress of August 3, 1894, Chapter 200, 53rd Congress, Second Session and further amended by Act of Congress of June 6, 1896, 29 Stat. 262, and that under the first of the above mentioned acts the refunding of county indebtedness was limited to indebtedness incurred prior to December 31st, 1890, subject to the provision that said indebtedness might be validated or allowed after said date and that by the second of the above mentioned acts the county indebtedness permitted to be refunded was

extended to include all indebtedness incurred prior to December 31, 1895, and that by the third of the above mentioned acts the final limit of county indebtedness to be refunded was extended to the first day of January, 1897, and that after said date no refunding of county indebtedness could be made under either of said acts, and that said acts by virtue of the constitution of Arizona became the law of the State of Arizona upon said Territory of Arizona becoming a state and was reenacted without change in this respect by Chapter 29 of the Session Laws of 1912, First Special Session, that one of the sections of said Chapter 29 was amended and a new section was added to said act by Chapter 2 of the Second Special Session of said legislature, and Chapter 50 of the Second Special Session of said legislature, but said Chapter I, Title 52, was never reenacted by said legislature, nor was any change or modification therein made, or any action taken with respect thereto by the Third Special Session of the First Legislature of the State of Arizona, and any provision therein which might be construed as authorizing the redemption or refunding of bonds of the issues owned and held by the plaintiff in this case was repealed by the enactment of Chapter 20, Laws of 1913, Third Special Session, hereinafter mentioned. [76]

3. That the bonds owned and held by the plaintiffs in this case were issued under the provisions of Chapter II, Title 52, Arizona Revised Code of 1913, being Sections 5266-5285, of said statutes. That said chapter was originally enacted as Chapter

29, Session Laws of 1912, Regular Session, but was reenacted in its entirety with certain additions thereto, as Chapter 20, Laws of 1913, Third Special Session, and that said Chapter 20, Laws of 1913, Third Special Session, as shown by the original Act on file in the office of the Secretary of State of the State of Arizona, contained a section numbered 20, expressly repealing all acts or parts of acts inconsistent with the provisions of said act. That said repealing section is not set forth in the Arizona Revised Statutes of 1913, and was not called to the attention of the Supreme Court of Arizona in either of the mandamus suits. That said Chapter 20, Laws of 1913, Third Special Session, with the exception of the said repealing section, is contained in the Revised Statutes of 1913, as Chapter II, Title 52. That said Act prescribes a complete procedure for the issuance, sale and redemption of county and municipal bonds. That Section 5273 of said Chapter expressly provides that the order for election shall fix and state the date of maturity of said bonds. That Section 5274 expressly provides that said bonds shall be payable at a date not to exceed forty years from the date of their issuance. Section 5278 of said Chapter expressly provides that the interest on said bonds shall be paid out of the tax levy provided for that purpose, until said bonds are redeemed. Section 5279 of said Chapter expressly provides a sinking fund to be created for the redemption of said bonds when the same shall mature. Section 5281 of said Chapter expressly provides that said bonds shall

be called when they mature by notice for four [77] weeks in some newspaper published in the county in which such bonds have been issued, and that all of the aforesaid provisions are inconsistent with the interpretation of the provisions in Chapter I of the same title under which defendants claim the right to redeem said bonds before maturity. That said Chapters I and II, Title 52, Revised Statutes of 1913, being set forth as a part of said statutes, appear to be part of a revised code without reference to the dates of their enactment. But that said Revised Statutes of 1913 did not constitute a revised code, but were compiled laws, compiled by the then Code Commissioner of the State of Arizona, pursuant to the provisions of Chapter 64 of the Acts of the Third Special Session of the First Legislature, which is not in said Revised Statutes, but is on file in the Secretary of State's office, and is published in a statute book containing temporary and special statutes, passed by the Third Special Session of the First Legislature. Said Chapter 64 is entitled:

“An Act to Provide for the Arrangement, Compilation and Indexing of the Laws of the State of Arizona, and the Publication Thereof, and to Extend the Term of Office of the Present Code Commissioner and to Define His Powers and Duties, and Making an Appropriation for His Compensation, and the Compensation of Stenographers to Be Employed by Him”.

Section 2 of said Act provides in part as follows:

“It shall be the duty of the said Code Commissioner to compile, arrange under proper heading and sections and chapters, all laws of a general nature which shall be in force after the adjournment of the third special session of the first legislature of the state of Arizona, or to take effect thereafter, and not repealed or adjudged unconstitutional by the Supreme Court of Arizona, with authority to arrange said laws into titles and chapters”.

And Section 7 of said Act reads:

“Nothing in this act shall be construed as giving said Code Commissioner any power to change or modify or make any law or laws, but [78] only as giving him full power and authority to complete full compilation and arrangement for publication of the laws of the state”.

That it clearly appears from the foregoing that Chapter I, Title 52, Revised Statutes of 1913, was inserted in said Revised Statutes by the Code Commissioner as a statute existing at the time of said compilation, and that said Chapter I, Title 52, must be given the status and interpretation that it had prior to said compilation, which is that it was an enactment prior to Chapter II, Title 52, Revised Statutes of 1913, and any provision therein inconsistent with Chapter II of Title 52, a later enactment, was repealed thereby.

That with the exception of the years 1901 to 1907, it has been a rule of statutory construction

of the State of Arizona by express provision of statute that a prior statute upon the same subject as a later statute does not continue or remain in force after the enactment of the later statute though it is consistent therewith.

Chapter 5 of Title 60 of the Revised Statutes of 1887 was omitted in the 1901 Revised Statutes, but was reenacted by Chapter 10, Session Laws of 1907, and became the law of the State of Arizona upon statehood by virtue of Section 2, Article XXII of the Arizona Constitution, and was reenacted by the First State Legislature as Chapter 19, of the Third Special Session, just prior to the enactment of Chapter 20 of the said Third Special Session, which was inserted in the Revised Statutes of 1913 as Chapter II of Title 52. Section 6 of said statute reads as follows:

“Sec. 6. When a statute has been enacted by the legislative power of the territory and has become a law no other statute, law or rule is continued in force because it is consistent with the provisions of such statute passed subsequently thereto, but in all cases provided for by such subsequent statute, all statutes, [79] laws and rules theretofore in force in this territory, whether consistent or not with the provisions of such subsequent statutes unless expressly contained in force by it shall be repealed and abrogated.”

That Chapter 20 of the Session Laws of 1913, Third Special Session, which is found in the 1913

Revised Statutes as Chapter II, Title 52, expressly included the redemption of the bonds authorized to be issued by said Chapter, as is shown by the title thereof, which expressly includes the subject of redemption of said bonds, and by the provision in Section 14 thereof providing that said bonds may be redeemed after their maturity.

4. That the provision in Section 5260, in Chapter I of Title 52, Revised Statutes of 1913, provided for funding and refunding, which defendants claim authorized the refunding of the bonds owned by the plaintiffs at the time when the same were issued by defendant, Maricopa County, was adopted, together with other provisions for refunding as a part of the reenactment of the Act of Congress of June 25, 1890, Chapter 614, 51st Congress, First Session, which was a part of the law of the Territory of Arizona before it became a state, and which by virtue of Section 2, Article XXII of the Constitution of Arizona became a law of the State of Arizona insofar as the same was not inconsistent with the Constitution of Arizona, but any provision inconsistent with said Constitution did not become a law of said state; that said provision as it existed in said Act of Congress, June 25, 1890, made all indebtedness refunded under said provision indebtedness of the Territory of Arizona and expressly obligated the Territory of Arizona to pay said bonds even though it did not collect the necessary taxes from the county to pay the same, (Par. 2047, p. 106, Ariz. Rev. Stat. 1901), and further expressly obligated the [80] Territory to pay the in-

terest on said bonds out of the special fund collected from the county for the purpose, and if said fund was not sufficient then to pay the same out of the general fund of said Territory, (Par. 2050, p. 109, Ariz. Rev. Stat. 1901). By Section 2 of Article XXII, Constitution of Arizona, when Arizona became a state the word, "state" was substituted for the word, "territory", so that said obligation to pay said bonds was imposed upon the State of Arizona, but that said provision was in conflict with Section 5 of Article IX of the State Constitution, which limited the indebtedness of the state to \$350,000.00 and expressly prohibited the creation of any indebtedness by the state for the purpose contemplated by said provision, and that said provision of Section 5260, Revised Code of 1913, until given the interpretation claimed by defendants, was likewise in violation of said section of the Constitution of Arizona, and, therefore, of no force or effect whatever; that for the reasons aforesaid, no bonds refunding county bonds could have been issued under Chapter I, Title 52, Revised Statutes, 1913, or any other law of the State of Arizona prior to the enactment of Article IV, Chapter 60, of the 1928 Revised Code of Arizona, in which it was provided that the state should not be liable for county bonds refunded by the State Loan Commissioners.

5. That the provision in Section 5260, of Chapter I, Title 52, Revised Code, 1913, under which defendants claim the right to refund and redeem the bonds owned by the plaintiffs, authorizes the

redeeming or refunding of county, municipal or school district indebtedness now allowed or that may be hereafter allowed by law to said county, municipal or school district upon official demand by said authorities. The expression "indebtedness now allowed or that may be hereafter allowed by [81] law", had its origin in a rider added by Congress to a territorial funding and refunding act by the Act of Congress of June 25, 1890, and that said language did not refer to indebtedness thereafter to be created but referred only to indebtedness then existing, which might thereafter be validated by act of the Territorial Legislature and that said language was so clearly understood and interpreted by the officials of the territory and by the legislature of the state of Arizona, and by Congress, and by the courts of said territory, and that such interpretation was frequently evidenced by acts of the legislature of the territory and that said expression continued to receive such interpretation by the public officials, the legislature, and the courts of the state of Arizona, until such expression was changed by the Code Commissioner in the Revised Code of 1928, in which code said expression was changed to, "indebtedness now allowed or hereafter allowed to be incurred by law", and other changes were made in said Chapter I, Title 52, Revised Statutes of 1913, which became Article IV of Chapter 60, of the Revised Code of 1928, for the purpose of making effective the provision for the refunding of county, municipal and school district indebtedness by the Code Commissioner of the state, and

authorizing the issuance of bonds by the Loan Commissioners on behalf of the counties, municipalities and school districts of the state as purely municipal obligations with only the issuance of said bonds and the levy and collection of taxes therefor being vested in the Loan Commissioners.

XXXI.

That the Arizona Revised Code of 1928 became effective on July 1, 1929, several years after the bonds owned by the plaintiffs in this case were issued by the defendant, Maricopa County; that each of the chapters of said Revised Code of 1928 [82] were first enacted as a separate enactment and after the same had all been separately enacted, the entire code was enacted by the legislature as one entire and complete act, under a general title appropriate for the purpose, and such enactment was held valid and effective by the Supreme Court of the state and it was further held by said Supreme Court that the effect of such enactment was to make each section of said Revised Code of 1928 a new enactment and of equal validity with every other section thereof, and to require each section of said code to be construed as if the same were a new and separate enactment, independent of every other section thereof and that the effect of such construction was to make Article IV of Chapter 60 of said Revised Code of 1928, which was formerly Chapter I, of Title 52, Revised Statutes of 1913, an independent enactment of equal validity with Article V of said Chapter 60, Revised Code of 1928, which

was formerly Chapter II, of Title 52, Revised Statutes of 1913, and that the other changes made in the former Chapter I, Title 52, Revised Code of 1913, had the effect of authorizing state, county and municipal bonds to be refunded by the Loan Commissioners of the State of Arizona in the manner and with the effect asserted by the defendants in this case, with the exceptions, (1) that said act did not provide for the calling of any of the bonds proposed to be refunded before their maturity dates, and (2) that said act made no provision for giving notice for the calling of said bonds, the old territorial provision for calling territorial warrants never having any application to calling in bonds or warrants before their due dates, and no provision having ever been made for calling state warrants. The Supreme Court of the State of Arizona in the two mandamus suits above mentioned supplied the two omissions necessary for calling of outstanding bonds, [83] which were not provided by said Article IV, Chapter 60, Revised Statutes of 1928, by holding that the provisions in said Section authorized the refunding of state bonds whenever such refunding should be to the benefit and advantage of the state, and the provision that county, municipal and school district bonds might be refunded in the same manner as state bonds authorized the calling of outstanding county bonds whenever the refunding of such bonds would effect a saving and advantage to the county, and by further holding that said Article IV, Chapter 60, Revised Code of

1928, was a reenactment of the Act of Congress of June 25, 1890, and that said Act of Congress adopted as the notice to be given for calling said bonds, a notice prescribed by the then existing statute of the territory for calling past due territorial warrants, and that such adoption of the old territorial statute for the calling of past due territorial warrants remained in force for the purpose of giving notice for calling outstanding bonds such as are owned by the plaintiffs by reason of having been incorporated into the original act of Congress which by successive reenactments became a part of the existing statutes of the state, notwithstanding the fact that the same had long since been repealed; that the result of said decisions of the Supreme Court of the State of Arizona is to provide the machinery for calling the bonds owned by plaintiffs in this case through Article IV, Chapter 60, Revised Code of 1928, and making of that statute a law impairing the obligation of the contract created by the issuance of said bonds of the plaintiffs.

XXXII.

That under the Constitution of Arizona, counties are bodies politic and corporate, and under said Constitution and laws of the state, the Boards of Supervisors are vested with [84] the power of legislating for their respective counties, and under the provisions of Article 4 of Chapter 10, of the Arizona Annotated Code of 1939, formerly Article 4 of Chapter 60, Arizona Revised Code of 1928, as construed by the Supreme Court of Arizona in,

Maricopa County v. Osborn, 125 Pac. (2d) 703, said Boards of Supervisors and the Loan Commissioners of the state are granted the legislative power of calling for payment, outstanding bonds of the county and terminating the agreement of the county to pay interest on said bonds before the due dates specified in said bonds. That both the Board of Supervisors of Maricopa County and the State Loan Commissioners have undertaken to exercise the power to call for payment, and stop payment of interest on, the bonds of plaintiffs before their due dates by each passing resolutions directing that the money received from the sale of the refunding bonds shall be paid to the State Treasurer and that said Maricopa County shall pay the interest to date remaining unpaid on said bonds to the State Treasurer, and finding that when the aforesaid moneys are paid to the State Treasurer there will be in the State treasury sufficient money to pay all principal and interest of all outstanding bonds of said issues, and directing said State Treasurer, as soon as said moneys are in the treasury, to publish a notice calling said bonds for redemption, and providing that the payment of interest on said bonds shall cease at the time specified in said notice. That the form of said notice and the time and manner of the publication of said notice are specified in said resolutions. That the provisions in said resolutions calling said bonds for payment and stopping payment of interest thereon before their due dates, are in violation of the contracts of said Maricopa

County to pay interest on said bonds until the due dates thereof made by said Maricopa County when said bonds were issued, and [85] said resolutions of said Board of Supervisors and said State Loan Commissioners are laws impairing the obligation of the aforesaid contracts of Maricopa County within the meaning and intent of Section 10 of Article I of the Constitution of the United States.

XXXIII.

That if the provisions of Section 5260 Revised Statutes of 1913 were ever susceptible of an interpretation permitting the call for redemption of bonds issued under Chapter II, Title 52, Revised Statutes of 1913, before their maturity such interpretation is conclusively precluded by the several refunding acts passed by the legislature of the state of Arizona subsequent to the issuance of the bonds owned and held by the plaintiffs in this case, and, particularly, by Chapter 39 of the Sessions Laws of 1927, which authorized county, municipal and school district bonds to be refunded only when they had "become payable at the option of such county, school district or municipality", and by Chapters 74 and 75 of the Session Laws of 1935, which authorized state and territorial bonds to be refunded by the Loan Commissioners only after they had become optional; that said acts of the legislature of the state of Arizona are a declaration of the policy of the state of Arizona to the effect that unmatured bonds are not redeemable, which is binding upon the defendants.

XXXIV.

That the attempt of the defendants to deprive the plaintiffs of the right to collect the rate of interest specified in the bonds held by them for the remainder of the term of said bonds is an unlawful attempt to deprive the plaintiffs of their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United [86] States; that the alleged right to call said bonds under the provisions of Article IV, of Chapter 10, of the Arizona Annotated Code of 1939, is contrary to the recognized interpretation of said statute from the time of its origin in the Act of Congress of June 25, 1890, Chapter 614, 51st Congress, First Session; that said Act of Congress applied only to indebtedness existing at the date of said enactment which had been allowed or validated or might be allowed or validated after the passage of said Act, the time for the allowance and validation of said indebtedness being extended by Act of Congress of August 3, 1894, Chapter 200, 54th Congress, Second Session, and further extended by Act of Congress of June 6, 1896, 29 Stat. 262, the last extension limiting the indebtedness to be refunded thereunder to the first day of January, 1897; that said acts were interpreted by several decisions of the Supreme Court of the Territory of Arizona and the Supreme Court of the United States; and that under said decisions there could be no refunding under said act of county indebtedness incurred after January 1, 1897; that the provisions of said Act of Congress of June

25, 1890 were incorporated without change in the statutes adopted by the first legislature of the state of Arizona, and inserted in Chapter I, Title 52, of the Revised Statutes of 1913, and from the date of statehood in Arizona in 1912, to July 1, 1929, when the Revised Code of 1928 became effective, bonds issued in pursuance of Chapter I, Title 52, Revised Statutes of 1913, clearly became direct obligations of the state of Arizona and could not be issued because prohibited by Section V of Article 9 of the State Constitution; that the bonds of plaintiffs which defendants seek to refund in this case were issued under Chapter II, Title 52, Revised Statutes of 1913, which contains provisions prescribing a complete pro- [87] cedure for the issuance of such bonds and provisions expressly requiring said bonds to be issued with definite maturity dates, and the interest to be paid until such maturity dates, a sinking fund to be created for the payment of the bonds at maturity, and for redemption of the bonds only after maturity; that the said provisions of Chapter II, Title 52, are wholly inconsistent with any right to call bonds issued under said Chapter II that may be implied from Chapter I of said Title 52, and said Chapter I becoming a statute of the state upon statehood, and said Chapter II being enacted by the legislature at a later date than said Chapter I, and containing an express repeal provision, necessarily prevails over Section i; that said Chapter II, Title 52, Revised Statutes of 1913, both in the title under which it was enacted and in the body thereof, con-

tained a provision for the redemption of said bonds; that such provision was limited to their redemption after their maturity dates and, therefore, prevailed over any provisions for redemption that might be contained in any statutes enacted prior to the date of the enactment of said Chapter II, Title 52; that Chapter 19 of the Laws of 1913, Third Special Session, inserted in the Revised Statutes of 1913 as Title 58, was in effect when Chapter 20, Laws of 1913, Third Special Session, inserted in the Revised Statutes of 1913, as Chapter II, Title 52, was enacted, and expressly provided that when any act enacted by the legislative power of the state became a law no other statute, law or rule was continued in force because consistent with the provisions of such later enactment, but unless expressly continued in force by such later enactment it should be repealed and abrogated. The bonds owned and held by the plaintiffs were expressly ratified, approved and declared free from defects in the form in which they were issued by the legislature [88] of the State of Arizona before they were purchased by plaintiffs, who paid a premium therefor in reliance upon the express provisions of the statutes of the state, including such ratifying acts, that at no time from statehood in the year 1912 until the year 1942, was there any suggestion by any public official of the county of Maricopa of the State of Arizona that such bonds were callable for redemption before their maturity dates; that defendant, Maricopa County received and beneficially expended for the purpose for which said bonds were voted, the money

paid by the purchasers of said bonds upon the representation that said bonds would continue to bear the rate of interest therein specified until their due dates and now seeks to call said bonds for redemption in order that it may receive the benefit of the lower interest rates now existing; that the plaintiffs and each of them paid a large premium for the bonds purchased by them in good faith, relying upon the public acts of the Board of Supervisors of Maricopa County as the same appeared of record and upon the acts of the legislature of the State of Arizona, duly enacted, that to deprive them of the right, under the circumstances stated, to receive the specified rate of interest on said bonds for which they paid a large premium, is to deprive them of their property without due process of law.

XXXV.

Plaintiffs allege that the facts herein set forth and, particularly, the fact that the legislature of the state of Arizona, approved and ratified the bonds to encourage their sale, and the further fact that the state of Arizona itself purchased a considerable number of said bonds, paying a premium therefor upon the theory that they were not redeemable before maturity and the fact that defendant, Maricopa County, received a price [89] for said bonds based upon said bonds not being redeemable until their maturity and used the money received from the sale of the bonds for the purpose for which said bonds were issued, and the payment by the plaintiffs of substantial premiums

in reliance upon such representations by the defendants, estop the defendants from now asserting any right to redeem said bonds contrary to the express terms of said bonds, and that to permit the defendant, Maricopa County, to redeem such bonds, as it seeks to do, will operate as a fraud on plaintiffs.

XXXVI.

That the decisions of the Supreme Court of the state of Arizona made in the two mandamus suits hereinabove referred to, are not binding upon the Federal Courts for the following reasons:

1. That the interests of the bondholders holding any of said bonds were not represented before the court in either of said mandamus proceedings.

2. That the rights of the bondholders could not be litigated in such proceedings for the reason that under Section IV, of Article 6, of the State Constitution, the Supreme Court of Arizona has only limited jurisdiction in original mandamus proceedings against state officers.

3. That the greater part of the issues of fact and law presented in this complaint do not appear to have been presented to the Supreme Court of the State of Arizona in either of said mandamus proceedings, and said Superior Court has not passed upon said issues.

4. That the decision of the Supreme Court in said mandamus proceedings is not binding upon the Federal Courts, first, because the jurisdiction of said courts in this case is based upon federal questions, second, questions of existing [90] state

law are not seriously involved, third, the law to be interpreted was originally enacted by Congress, fourth, the case presents questions of estoppel against the state, and fifth, the State of Washington, as a sovereign state, is entitled to an independent determination by the Federal Courts.

XXXVII.

That this action is brought under the provisions of the Declaration Judgment Act, being 28 United States Code Annotated, Section 400; that it is evident from the allegations herein made that the defendants are proceeding to violate the plaintiffs' rights in the respects herein alleged, and that the plaintiffs have the right under said Act to resort to the federal courts for a determination of their rights without waiting the withholding of the interest on their bonds, which the defendants have clearly and plainly declared their intention to withhold.

Wherefore, plaintiffs pray that an adjudication may be made of their rights under the bonds which they severally hold, that it be declared that they and each of them are entitled to be paid the rate of interest specified in said bonds until the respective due dates of said bonds; and that in the event said defendants should refuse to make such payments, plaintiffs be awarded such further relief as the court may deem proper, and their costs.

SMITH TROY,

Attorney General, of the
State of Washington,

By JOHN SPILLER

Assistant Attorney General
GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE AND
COOLIDGE,

201-11 Professional Building,
Phoenix, Arizona,

By JOHN L. GUST

Attorneys for Equitable Life
Insurance Company of
Iowa. [91]

EXHIBIT A

\$1000.00

UNITED STATES OF AMERICA
STATE OF ARIZONA

County of Maricopa
Highway Bond

Election of May 17, 1919

No.....

No.....

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted and promises to pay to the bearer hereof, on the 15th day of June, A. D. 19...., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of five and one-half per centum per annum, payable semi-annually

on the 15th day of June and the 15th day of December of each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest aforesaid shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona.

This bond is one of a series of four thousand bonds of the same date and tenor, except as to maturity, numbered respectively from 1 to 4,000, inclusive, and amounting to the aggregate of four million dollars (\$4,000.00)

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 31st day of March, 1919, and the report duly made by the Highway Commission for said county of Maricopa to said Board of Supervisors on the 10th day of April, 1919, and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 10th day of April, 1919, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election

legally called and duly held on the 17th day of May, 1919, for the purpose of determining whether the above-mentioned series of bonds should be issued.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner, as required by law, and that the bonded and other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof. [92]

The full faith, credit and resources of the said County of Maricopa are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

In Witness Whereof The said County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors and the seal of the said Board of Supervisors to be hereunto affixed this 15th day of June, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors of the
County of Maricopa, State of Arizona.

Attest:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors of the County
of Maricopa, State of Arizona.

2. That each of the said series of four thousand (\$4,000) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of twenty-seven dollars and fifty cents (\$27.50) each, and payable on the 15th day of June and the 15th day of December of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit:

The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th day of 19...., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Twenty-seven dollars and fifty cents in gold coin of the United States, for the semi-annual interest on its highway bond numbered

Election of May 17, 1919.

W. K. BOWEN

Chairman of the Board of Supervisors of Maricopa County, State of Arizona.

Attest:

CLARENCE L. STANDAGE

Clerk of the Board of Supervisors of Maricopa County, State of Arizona.

\$27.50

Coupon Number

3. That the following form for registration shall be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

This bond is registered pursuant to the statutes

in such case made and provided in the name of
....., and the interest and principal thereof
are hereby payable to such owner.

.....

State Auditor" [93]

—————

EXHIBIT B

\$1000.00

UNITED STATES OF AMERICA
STATE OF ARIZONA

County of Maricopa

Highway Bond

No..... Election of December 31, 1920. No.....

The County of Maricopa, State of Arizona, for value received, hereby acknowledges itself indebted and promises to pay to the bearer hereof, on the 15th day of January, A.D. 19...., the sum of One Thousand Dollars (\$1000.00) in gold coin of the United States, with interest hereon from date hereof in like gold coin at the rate of six per centum per annum, payable semi-annually on the 15th. day of January and the 15th. day of July of each year, on presentation and surrender of the interest coupons hereto attached. Both principal and interest aforesaid shall be payable at the office of the Treasurer of the County of Maricopa, State of Arizona, or at in the City of New York.

This bond is one of a series of four thousand five hundred bonds of the same date and tenor except as to maturity, numbered respectively from four thousand one (4,001) to eight thousand five hundred (8,500) inclusive, and amounting in the aggregate to Four Million Five Hundred Thousand Dollars (\$4,500,000.00).

This bond is issued by the Board of Supervisors of said County of Maricopa, for the purpose of constructing and improving public highways within and for the said County of Maricopa, pursuant to and in strict compliance with the Constitution of the State of Arizona, and the statutes thereof, including among others Chapter II of Title LII of the Revised Statutes of Arizona, 1913, Civil Code, and Chapter 31 of the Session Laws of Arizona, Regular Session, 1917, and acts amendatory thereof and supplementary thereto, and in pursuance of a resolution of said Board of Supervisors duly adopted on the 16th. day of August, 1920, and the report duly made by the Highway Commission for said County of Maricopa to said Board of Supervisors on the 16th. day of August, 1920 and a resolution by said Board of Supervisors duly adopted upon receipt of said report and on said 16th. day of August, 1920, and with the assent of a majority of the property taxpayers who were then qualified electors of said county voting at a special election legally called and duly held on the 31st. day of December, 1920, for the purpose of determining whether the above-mentioned series of bonds should be issued.

This bond is of the issue which was validated by Act of Legislature of State of Arizona in its Regular Session, 1921, by passage of Senate Bill No. 160, which was approved March 14th, 1921.

It is hereby certified, recited and declared that all acts, conditions and things, required to be performed, to exist and to happen, precedent to and in the issuance of this bond, have been performed, have existed and have happened in due time, form and manner as required by law, and that the bonded and [94] other indebtedness of said county, including this bond and all other bonds of the above-mentioned series, does not exceed ten per centum of the taxable property of said county as shown by the last assessment roll thereof.

The full faith, credit and resources of the said County of Maricopa, are hereby irrevocably pledged for the punctual payment of the principal and interest of this bond.

In Witness Whereof the Said County of Maricopa by its Board of Supervisors has caused this bond to be signed by the Chairman and attested by the Clerk of said Board of Supervisors, and the seal of the said Board of Supervisors to be hereunto affixed this 15th. day of January, 1921.

GUY F. VERNON

Chairman of the Board of Supervisors of the
County of Maricopa, State of Arizona.

Attest:

.....

Clerk, of the Board of Supervisors of the County
of Maricopa, State of Arizona.

2. That each of the said series of four thousand five hundred (4,500) bonds shall have attached thereto such number of semi-annual interest coupons in the sum of Thirty Dollars (\$30.00) each, and payable on the 15th. day of January and the 15th. day of July of each year during the term of said bond, as shall be sufficient to evidence all the interest to become due on said bond during the term thereof; and the form of each of said interest coupons is hereby prepared and fixed as follows, to-wit: (except changes as to dates of payments):

“The County of Maricopa, State of Arizona, hereby promises to pay to the holder hereof on the 15th. day of January, 19...., at the office of the County Treasurer of the County of Maricopa, State of Arizona, Thirty Dollars (\$30.00) in gold coin of the United States, for the semi-annual interest on its highway bond numbered

Election of December 31st, 1920.

.....
Chairman of the Board of Supervisors of Maricopa County, State of Arizona.”

Attest:

.....
Clerk of the Board of Supervisors of Maricopa County, State of Arizona.

\$30.00

Coupon Number.....

3. That the following form for registration shall

be printed on the back of each of said bonds as many times as space will reasonably permit, to-wit:

[95]

.....19....

This bond is registered pursuant to the statutes in such case made and provided and in the name of, and the interest and principal thereof are hereafter payable to such owner.

.....

State Auditor

[Endorsed]: Filed May 17 1943. [96]

—————

[Title of District Court and Cause.]

AMENDED ANSWER OF DEFENDANTS TO
AMENDED COMPLAINT

Now come defendants Maricopa County, John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona; Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Jim Brush, State Treasurer, constituting the Loan Commissioners of the State of Arizona; Jim Brush, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona, and for amended answer to the amended complaint of plaintiffs on file herein, admit, allege, and deny as follows:

FIRST DEFENSE

I.

The amended complaint fails to state a claim against defendants upon which relief can be granted. [97]

SECOND DEFENSE

I.

Defendants admit the allegations contained in paragraphs I, II, and III of plaintiffs' amended complaint.

II.

Defendants deny the allegation contained in paragraph IV of plaintiffs' amended complaint that said bonds, held by the State of Washington, are payable as of their respective due date without acceleration of maturity, and allege that said bonds are redeemable prior to their maturity dates as provided by the laws of the State of Arizona in Chapter I, Title 52, Revised Statutes of 1913 of said state.

III.

Defendants deny the allegation contained in paragraph V of plaintiffs' amended complaint that said bonds held and owned by plaintiff Equitable Life Insurance Company of Iowa are payable as of their respective due dates without acceleration of maturity; and allege that said bonds are redeemable prior to their maturity dates as provided by the laws of the State of Arizona in Chapter I, Title 52, Revised Statutes of 1913 of said state.

IV.

Defendants admit the allegations stated in paragraph VI of plaintiffs' amended complaint insofar as they assert the existence of the statutes of the State of Arizona therein referred to. Defendants deny each and every allegation contained in paragraph VII of plaintiffs' amended complaint and in this respect defendants allege that the Maricopa County Highway Bonds referred to in the complaint were at all times subject to redemption as provided in Chapter I, Title 52, Arizona Revised Statutes of 1913. [98]

V.

Defendants admit the allegations of paragraphs VIII, IX, X, and XI of said complaint insofar as they assert the existence of the laws of the State of Arizona and the proceedings thereunder for the issuance of said Maricopa County Highway Bonds. Defendants deny each and every allegation contained in paragraph XII of plaintiffs' amended complaint.

VI.

Defendants admit the allegations contained in paragraphs XIII, XIV, XV, and XVI of plaintiffs' amended complaint insofar as they assert the existence of the laws of the State of Arizona and proceedings thereunder for the issuance of Maricopa County Highway Bonds. Defendants allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XVII of said amended complaint. Defendants admit the alle-

gations contained in paragraphs XVIII, XIX, and XX of plaintiffs' amended complaint insofar as they assert the existence of the laws of the State of Arizona and proceedings thereunder for the issuance of Maricopa County Highway Bonds. Defendants deny each and every allegation contained in paragraph XXI of said complaint.

VII.

Defendants admit the allegations contained in paragraphs XXII, XXIII, and XXIV of plaintiffs' amended complaint and allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph XXV of said complaint.

VIII.

Answering the allegations of paragraph XXVI of plaintiffs' amended complaint, defendants admit that in the year 1942 the Board [99] of Supervisors of Maricopa County adopted a resolution demanding that the Loan Commissioners of the State of Arizona issue refunding bonds for the purpose of redeeming and refunding all of the bonds of the two issues of Maricopa County described in the complaint; that the Loan Commissioners refused to issue such refunding bonds of the State of Arizona and that thereupon the said Board of Supervisors of Maricopa County instituted an original mandamus proceeding in the Supreme Court of the State of Arizona to compel said Loan Commissioners to refund and redeem said bonds under the

provisions of the laws of the State of Arizona in force and effect at the time of the issuance of said Maricopa County Highway Bonds. (That said proceeding was thereafter duly heard by the Supreme Court of the State of Arizona and that plaintiffs herein and all other holders and owners of the bonds of said Maricopa County described in said complaint were and became parties to said proceeding in a class, and, as defendants are informed and believe, were represented in said proceeding by Messrs. Gust, Rosenfeld, Divilbess, Robinette and Coolidge, their attorneys (said attorneys being the attorneys for plaintiffs in the above entitled cause) and by Messrs. Pershing, Bosworth, Dick & Dawson and by Messrs. Cox & Cox and Herbert Watson. That J. L. Gust, Esq., attorney for plaintiffs in the above entitled cause, appeared in said mandamus proceeding in the Supreme Court of the State of Arizona on behalf of plaintiffs herein and the owners and holders of all other bonds of Maricopa County, as defendants are informed and believe, and that the said Supreme Court of Arizona by order duly made and entered authorized and permitted such appearance. That likewise said Pershing, Bosworth, Dick & Dawson and said Cox & Cox and Herbert Watson appeared in said mandamus proceeding on behalf of the owners and holders of all outstanding bonds of Maricopa [100] County and, as defendants are informed and believe, the said matter was duly heard and upon the hearing thereof the Supreme Court of the State of Arizona, on May 4, 1942, rendered its

decision entitled: "Maricopa County vs. Osborn, et al, Ariz., 125 Pac. (2d) 703," which is hereby referred to and by reference incorporated herein and made a part hereof. That thereafter the owners and holders of said bonds of Maricopa County represented, as defendants are informed and believe, by said Messrs. Gust, Rosenfeld, Divelbess, Robinette and Coolidge, Messrs. Pershing, Bosworth, Dick & Dawson, and Messrs. Cox & Cox and Herbert Watson, petitioned said Supreme Court of Arizona for a rehearing and that thereafter, to-wit, on or about September 16th, 1942, the Supreme Court of Arizona denied said motion for rehearing and issued its Peremptory Writ of Mandate ordering and directing said Loan Commissioners to proceed with the refunding of said Maricopa County Highway Bonds and to redeem said Maricopa County Highway Bonds, and in said opinion decided and held that Chapter 1, Title 52, Revised Statutes of Arizona, 1913, was applicable to the redemption and refunding of said issues of bonds of Maricopa County of which the bonds described in the complaint as held by said plaintiffs are a part. That thereafter the Board of Supervisors of Maricopa County demanded that said Loan Commissioners proceed with the redemption of said Maricopa County Highway bonds and said Loan Commissioners, thereupon adopted a resolution calling for bids for the State of Arizona Refunding Bonds to refund and redeem the remainder of the two issues of Maricopa County Highway Bonds described in the complaint remain-

ing outstanding, including all of the bonds owned and held by plaintiffs as alleged in the complaint. >
(That notice of the sale of said State of Arizona Refunding Bonds was duly and regularly advertised and in response to said call for [101] bids, a syndicate of investment bankers offered to purchase the same at the par value thereof and accrued interest thereon and a premium, and offered to purchase said State of Arizona Refunding Bonds at an interest rate of only $2\frac{3}{4}\%$ per annum, and that said Loan Commissioners on February 10, 1943, awarded said State of Arizona Refunding Bonds in the principal amount of \$4,100,000, bearing interest at $2\frac{3}{4}\%$ per annum to said syndicate of investment bankers. That the difference in interest on the said refunding bonds, to-wit, $2\frac{3}{4}\%$ per annum, as compared to interest accruing on the outstanding bonds of Maricopa County, to-wit, $5\frac{1}{2}\%$ and 6% , will effect a saving to Maricopa County and its taxpayers of more than 3% on the \$4,100,000 principal amount of bonds to be redeemed, or a saving in excess of \$124,000 per year in interest. That after awarding said bonds to said syndicate of investment bankers, said Loan Commissioners, acting on the advice of the Attorney General of the State of Arizona, refused to execute or deliver the said $2\frac{3}{4}\%$ State of Arizona Refunding Bonds to said purchasers and that thereupon Maricopa County instituted a proceeding in the Supreme Court of the State of Arizona in mandamus to compel said Loan Commissioners to execute and deliver said $2\frac{3}{4}\%$ refunding bonds. That

on April 12, 1943 the Supreme Court of the State of Arizona rendered its decision, entitled: "Maricopa County vs. Osborn, et al, Ariz. Pac. (2d) . . .," a copy of which is attached to the answers of these defendants to the original complaint filed herein, ordering and directing that the Alternative Writ of Mandate issued in said proceeding be made peremptory and that said Loan Commissioners execute and deliver all of said 2¾% State of Arizona Refunding Bonds to said purchasers, and in and by said opinion declared the law of the State of Arizona and held and adjudicated that the outstanding highway bonds of Maricopa County are and were subject to redemption at any time prior to their fixed maturity dates at the option of [102] Maricopa County and were subject to redemption from the proceeds of the sale of said 2¾% State of Arizona Refunding Bonds. Defendants Deny each and every other allegation contained in said paragraph XXVI.

IX.

Defendants deny each and every allegation contained in paragraph XXVII of plaintiffs' amended complaint.

X.

For answer to paragraph XXVIII of plaintiffs' amended complaint defendants admit that the purchasers of said bonds will accept and pay for the same as soon as their attorneys render an opinion approving the validity of said bonds, and as soon as said bonds are ready for delivery, but deny each

and every remaining allegation contained in said paragraph.

XI.

Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XXIX of said complaint.

XII.

For answer to paragraph XXX of plaintiffs' amended complaint defendants admit the enactment and provisions of Chapters I and II of Title 52 of Arizona Revised Statutes of 1913, and also the various acts of the Legislature of the State of Arizona, and the provisions of the Constitution of the State of Arizona and the provisions of the acts of Congress set forth in said Paragraph XXX of said amended complaint, but deny that said Maricopa County Highway Bonds are subject to redemption as alleged by plaintiffs, but allege that said bonds are subject to redemption as provided by said Chapter I of Article 52 of Arizona Revised Statutes of 1913, and in this respect defendants allege that the law of the [103] State of Arizona is, and has been, finally and conclusively adjudicated by the decisions of the Supreme Court of the State of Arizona as set forth in those decisions, heretofore referred to.

XIII.

Defendants deny each and every allegation contained in paragraph XXXI of plaintiffs' amended complaint, except defendants admit the enactments and provisions of law of the State of Arizona

therein pleaded, and in this respect defendants allege that the law of the State of Arizona is, and has been, by the decisions of the Supreme Court of the State of Arizona finally and conclusively adjudicated, as aforesaid.

XIV.

Defendants admit the enactment and provisions of the laws of the state of Arizona, as alleged in paragraph XXXII of plaintiffs' amended complaint, but deny that the board of supervisors of Maricopa County are exercising any legislative function in refunding the said Maricopa County Highway Bonds, and in this respect defendants allege that the authority of the Loan Commissioners of the State of Arizona to refund said Maricopa County Highway Bonds is authorized by Chapter I of Title 52, of the Revised Statutes of Arizona 1913, as construed by the decisions of the Supreme Court of the State of Arizona, as aforesaid, and that said provisions of law for the refunding of said outstanding Maricopa County Highway Bonds was a valid enactment by the Legislature of the State of Arizona, in force and effect at the time said Maricopa County Highway Bonds were issued, and consequently no act of the Board of Supervisors of Maricopa County, or said Loan Commissioners, by invoking the provisions of said Chapter I of Article 2 of the Revised Statutes of Arizona 1913 could operate to impair the obligation of contract arising out of their ownership of said Maricopa County [104] Highway Bonds. Defendants

admit that said outstanding Maricopa County Highway Bonds will be called for redemption when said refunding bonds are sold to the purchasers thereof and that such proceedings will be taken by the Loan Commissioners of the State of Arizona as is authorized by law for the effective refunding of said Maricopa County Highway Bonds, but deny that such proceedings will impair the obligation of contract arising out of the ownership of said Maricopa County Highway Bonds by plaintiffs herein.

XV.

Defendants admit the enactment and provisions of the various refunding acts of the Legislature of the State of Arizona, as alleged in paragraph XXXIII of plaintiffs' amended complaint, but deny each and every other allegation contained in said paragraph, and in this respect defendants refer to said decisions of the Supreme Court of Arizona.

XVI.

Defendants deny each and every allegation contained in paragraph XXXIV of plaintiffs' amended complaint.

XVII.

Defendants deny each and every allegation contained in paragraph XXXV of plaintiffs' amended complaint.

XVIII.

Defendants deny each and every allegation contained in paragraph XXXVI of plaintiffs' amended complaint.

XIX.

Defendants deny that they are proceeding to violate any rights of plaintiffs as alleged in paragraph XXXVII of plaintiffs' [105] amended complaint, and allege that they are without knowledge or information sufficient to form a belief as to the remaining allegations of said paragraph.

THIRD DEFENSE

Defendants allege that the cause of action set forth in plaintiffs' amended complaint for declaratory judgment is barred by the decisions and judgments of the Supreme Court of the State of Arizona, heretofore referred to and by reference made a part hereof, in that said decisions and judgments of the Supreme Court of the State of Arizona are res adjudicata and that by reason thereof the matters in this proceeding were finally adjudicated and settled and that plaintiffs herein are thereby barred from maintaining or prosecuting this suit.

FOURTH DEFENSE

Defendants allege that plaintiffs herein have instituted this action for the purpose of harassing defendants and delaying, impeding, hindering, and obstructing them from carrying out and complying with the peremptory writs of mandamus issued out of the Supreme Court of the State of Arizona in the cases decided in that court, heretofore referred to, authorizing the refunding of said Maricopa County Highway Bonds, and that the maintenance

of this action by plaintiffs constitutes vexatious litigation.

Wherefore defendants pray that plaintiffs be denied the relief prayed for by their amended complaint herein and that said complaint be dismissed; and for such other and further [106] relief as may be meet and proper in the premises; and for their costs herein expended.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa
County

Attorneys for the Defendants Maricopa County
and the Officials of Maricopa County, Arizona

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney Gen-
eral

Attorneys for the Defendants Who Are Officials of
the State of Arizona.

[Endorsed]: Filed May 17 1943. [107]

[Title of District Court and Cause.]

NOTICE OF MOTION FOR SUMMARY
JUDGMENT UNDER RULE 56

To: Messrs. Gust, Rosenfeld, Divilbess, Robinette,
& Coolidge, attorneys for plaintiffs herein:

Please Take Notice, that on the 17th day of May, 1943, at the hour of 10:00 A. M., or as soon thereafter as counsel can be heard, the undersigned attorneys for the defendants herein will appear before the Judge of the above entitled Court, and move that summary judgment be entered herein in accordance with Rule 56 of the Federal Rules of Civil Procedure for the District Courts of the United States.

In support of said motion for summary judgment the undersigned counsel for the defendants herein will file with the Clerk of the above entitled Court, as constituting a part of the record herein, the following:

1. Motion for Summary Judgment Under Rule 56(b). [108]

2. Affidavit in Support of Motion for Summary Judgment Under Rule 56, executed by Earl Anderson, Chief Assistant Attorney General of the State of Arizona, of Counsel for the defendants named herein who are state officials.

3. Affidavit in Support of Motion for Summary Judgment Under Rule 56, executed by Leslie C. Hardy, Special Counsel for the defendant Maricopa County, and for the public officials of that county named as defendants herein.

4. Answer of Defendants Maricopa County; John A. Foote, Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona.

5. Answer of Defendants Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Dan

E. Garvey, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; Dan E. Garvey, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona.

6. Memorandum of Points and Authorities on Behalf of all Defendants in Support of Motion for Summary Judgment Under Rule 56.

Copies of each and all of the foregoing enumerated documents are herewith served upon you as counsel for plaintiffs herein.

In the presentation of said motion for summary judgment to the Judge of the above entitled Court, at the time indicated, as aforesaid, the documents above enumerated, together with the complaint on file herein, and such other parts of the record herein as may be appropriate thereto, will be presented to the Judge of the above entitled Court for his consideration in disposing of said motion for summary judgment. [109]

Dated this 29th day of April, 1943.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa
County

Attorneys for the Defendants Maricopa County;
John A. Foote, Ed Oglesby and Phil Isley,
Constituting the Board of Supervisors of Maricopa County, Arizona.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for the Defendants Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Dan E. Garvey, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; Dan E. Garvey, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona.

On this 29th day of April, 1943, the undersigned counsel for the plaintiffs herein, do hereby admit service of copies of the foregoing Notice of Motion for Summary Judgment, together with the documents enumerated therein and numbered from one to six inclusive.

GUST, ROSENFELD, DIVIL-
BESS, ROBINETTE and
COOLIDGE,

By J. L. GUST

Attorneys for the Plaintiffs.

[Endorsed]: Filed Apr 29 1943. [110]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT
UNDER RULE 56 (b)

Defendants Maricopa County; and John A. Foote; Ed Oglesby and Phil Isley, constituting the Board of Supervisors of Maricopa County, Arizona; Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Dan E. Garvey, State Treasurer, constituting the Loan Commissioners of the State of Arizona; Dan E. Garvey, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona, move the Court as follows:

1. For summary judgment in favor of defendants as to the whole of the claim asserted by plaintiffs State of Washington and the Equitable Life Insurance Company of Iowa.

2. For summary judgment that this Court is bound by the decisions of the Supreme Court of the State of Arizona in the cases of Maricopa County v. Osborn, et al, (1942),.....Ariz.....; 125 P. (2d) 703, and the decision rendered by that Court on [111] April 12, 1943, in the subsequent case of Maricopa County v. Osborn, et al, Ariz., ... P. (2d) ..., holding that the Maricopa County Highway Bonds herein the subject of litigation are redeemable and refundable prior to their respective maturity dates, as provided by the laws of the State of Arizona.

3. For summary judgment that the Maricopa County Highway Bonds herein the subject of litigation be adjudged to be redeemable and refundable prior to their respective maturity dates by the

Loan Commissioners of the State of Arizona.

4. For summary judgment that upon the giving of notice for call and redemption of the outstanding Maricopa County Highway Bonds as prescribed by the statutes of the State of Arizona, Maricopa County will cease to remain liable to these plaintiffs as bondholders and to all holders of Maricopa County Highway Bonds for payment of interest on said bonds accruing thereafter.

5. For summary judgment that defendants' action in refunding said outstanding Maricopa County Highway Bonds will infringe none of plaintiffs' rights under the Constitution of the United States.

6. For summary judgment that defendants have and recover their costs of suit herein incurred.

Dated this 29th day of April, 1943.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for the Defendants Sidney P. Osborn,
Governor, and Other State Officials Named as
Defendants.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa County

Attorneys for the Defendants Maricopa County
and the Officers Thereof Named as Defendants

[Endorsed]: Filed Apr 29 1943. [112]

[Title of District Court and Cause.]

AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT UNDER RULE 56

State of Arizona,
County of Maricopa.—ss.

Leslie C. Hardy, first being duly sworn, deposes and says:

1. That he was at all times mentioned herein, and he is now, an attorney engaged in the practice of law in the Courts of the State of Arizona, as well as in the United States District Court for the District of Arizona, and that he is authorized to appear herein in association with the County Attorney of Maricopa County, and was also authorized to appear as special counsel for Maricopa County, as plaintiff, in an original action in mandamus brought before the Supreme Court of the State of Arizona on March 4, 1943, entitled: "Maricopa County, a body politic and corporate vs. Sidney P. Osborn, Governor of the State of Arizona, Ana Frohmiller, State Auditor [113] of the State of Arizona; and J. D. Brush, State Treasurer of the State of Arizona, constituting the Loan Commissioners of the State of Arizona, No. 4606", and that although pending at the time of the filing of the complaint herein before this Court, said action in mandamus was decided by the Supreme Court of the State of Arizona on April 12, 1943.

2. That in his capacity as special counsel affiant became and is now personally familiar with the

facts surrounding the indebtedness of the said Maricopa County in the principal amount of \$4,-100,000 of Maricopa County Highway Bonds.

3. That defendant, Maricopa County heretofore, to-wit, under date of June 15, 1919, pursuant to the laws of the State of Arizona, duly authorized and issued \$4,000,000 principal amount of Highway Bonds, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, payable semi-annually, maturing over a period of 20 years beginning June 15, 1930, of which issue there were on or about July 7, 1941, outstanding and unpaid bonds in the principal amount of \$2,100,000, whereof there are now outstanding and unpaid as of the date hereof \$1,700,000 principal amount of said bonds, being bonds numbered 2301 to 4000, both inclusive, which mature and become payable in serial amounts on June 15th in each of the years 1944 to 1949, both inclusive. That of said issue there is also outstanding and unpaid \$200,000 principal amount of bonds maturing June 15, 1943.

4. That defendant, Maricopa County, heretofore, to-wit, under date of January 15, 1921, pursuant to the laws of the State of Arizona, duly authorized and issued \$4,500,000 principal amount of Highway Bonds, bearing interest at the rate of 6% per annum, payable semi-annually, maturing over a period of 20 years beginning January 15, 1931, of which issue there were on or about July [114] 7, 1941, outstanding and unpaid bonds in the principal amount of \$2,800,000, whereof there are now outstanding and unpaid as of the date hereof

\$2,400,000 principal amount of said bonds, being bonds numbered 6101 to 8500, both inclusive, which mature and become payable in serial amounts on January 15th in each of the years 1944 to 1951, both inclusive.

5. That on July 7, 1941, the Board of Supervisors of Maricopa County passed and adopted a resolution officially demanding that the Loan Commissioners of the State of Arizona redeem and refund said issued and outstanding Highway Bonds of Maricopa County in the aggregate principal amount of \$4,900,000, which aggregate principal amount was outstanding as of said July 7, 1941, and by such resolution the Board of Supervisors of Maricopa County found and recited that the redeeming and refunding of such outstanding indebtedness would be for the profit and benefit of Maricopa County.

6. That on November 7, 1941, said Loan Commissioners informed the Board of Supervisors of Maricopa County, in writing, that they were unauthorized to refund said outstanding indebtedness of Maricopa County as demanded by Maricopa County, as aforesaid, and said Loan Commissioners did thereupon refuse to redeem and refund said outstanding Highway Bonds of Maricopa County or to provide for the refunding thereof, and thereupon, to-wit, on February 2, 1942, Maricopa County filed an original action in mandamus in the Supreme Court of the State of Arizona, which proceedings were entitled as hereinbefore set forth in paragraph 1, to command said Loan Commissioners

to redeem and refund said outstanding indebtedness of Maricopa County notwithstanding the refusal of said Loan Commissioners to do so.

7. That said original action filed in the Supreme Court [115] of the State of Arizona, as aforesaid, duly came on for hearing and decision, and on May 4, 1942, said Court rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action, and by said peremptory writ of mandamus said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa County; that on September 16, 1942, said Supreme Court of the State of Arizona, reaffirmed its judgment by denial of a petition for rehearing filed by defendants in said original action for mandamus.

8. That in said decision, the Supreme Court of the State of Arizona held and determined that the statutes of the State of Arizona, being Chapter I, Title 52, Arizona Revised Statutes of 1913, were in full force and effect on the dates of June 15, 1919, and January 15, 1921, being respectively the dates of issuance of Maricopa County Highway Bonds, and that said statutes entered into and became a part of said Maricopa County Highway Bonds; that Chapter I, Title 52, Arizona Revised Statutes of 1913, authorized the call and redemption and refunding of said bonds prior to their respective maturity dates; that the calling of outstanding Maricopa County Highway Bonds for the redemption and refunding prior to their respective maturity dates was a legal and valid power con-

ferred upon the Loan Commissioners of the State of Arizona by the provisions of Chapter I, Title 52, Arizona Revised Statutes of 1913, and that it became the duty of said Loan Commissioners to call said bonds for redemption and refunding upon official demand of the County of Maricopa. That in view of the foregoing decision, the alternative writ of mandamus issued therein was made peremptory.

9. That in said original proceedings in mandamus brought in the Supreme Court of the State of Arizona by the [116] County of Maricopa on February 2, 1942, plaintiffs' attorneys herein, being Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, appeared therein and were authorized and permitted to appear therein by order of said Supreme Court duly made and entered. That said proceeding was thereafter duly heard by the Supreme Court of the State of Arizona and that, as affiant is informed and believes, plaintiffs herein and all other holders and owners of the bonds of said Maricopa County described in said complaint were and became parties to said proceeding as a class and were represented in said proceeding by their attorneys Messrs. Gust, Rosenfeld, Divelbess, Robinette & Coolidge, and/or by their attorneys Messrs. Pershing, Bosworth, Dick & Dawson of Denver, Colorado, and/or by Messrs. Cox and Cox and Herbert Watson of Phoenix, Arizona. That said attorneys for plaintiffs herein made the same contention before the Supreme Court of Arizona as is now made by them before this Court to the effect that the Loan Commissioners of the State of

Arizona had no authority under the laws of the State of Arizona to redeem outstanding Maricopa County Highway Bonds prior to their fixed maturity dates. That in said proceedings said attorneys who now represent the plaintiffs in this action had fully considered and determined against them all arguments to the effect that said bonds were not redeemable prior to their respective maturity dates and refundable by the issuance of State of Arizona Refunding Bonds. That the brief of plaintiff's attorneys filed in said action, a copy of which is annexed hereto and marked "Exhibit C," and which is hereby referred to and by reference incorporated herein and made a part hereof, reads in part on pages 6-7, and 17-18 as follows:

"Proposition number 1 stated above, to the effect that the bonds of Maricopa County which said county desires to refund, were issued with a definite maturity date without provisions for calling before maturity in exact compliance with [117] Chapter 2, Title 52, Civil Code 1913, is clear from an examination of Sections 5266 to Section 5281, both inclusive. Said sections provide a complete procedure for authorization by the electors, the issuance, payment and retirement of county, school district and municipal bonds. No aid from Chapter 1 of said Title 52 is required to provide for such authorization, issuance, payment or retirement of said bonds. Section 5273 expressly requires that the call for the elections shall set forth among other things the term of the bonds and the date of maturity of the bonds. Section 5274 says that the bonds

shall be payable at a date not to exceed forty years from the date of their issuance. Section 5279 provides that the tax to be levied shall provide a fund for the redemption of the bonds when they mature and Section 5281 provides that when the bonds shall mature it shall be the duty of the county or city or town treasurer, as the case may be, to give notice for four weeks in some newspaper, of the intention to redeem such bonds, and for the application of money on hand to such redemption. Clearly the provisions of these sections authorize the officials of the counties and municipalities, when so directed by the electors at an election, to make bonds payable at a definite maturity date without provision for prior call and when they have so issued bonds a contract has been entered into by the purchasers of these bonds with the county or municipality that cannot be set aside at a later date by either party because the exigencies of finance make it profitable to escape from the contract. * * *"

* * * * *

"Proposition number 5, above stated, to the effect that the provisions of 5273 providing a date of maturity for bonds to be stated in the call for election and provisions of Section 5279 providing for the levy of a tax to pay said bonds until they mature, and the provisions of Section 5281 providing for the retirement of such bonds after maturity, cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252

and 5253, Chapter 1 of said Title 52, is very clear for several reasons. In the first place as has been pointed out, the provisions in Chapter 2 refer to an entirely different kind of bond than do the provisions in Chapter 1.

“In the second place, no express repeal being made, an implied repeal will not be presumed unless the two provisions cannot stand together. * * *.”

[118]

10. That pursuant to said peremptory writ of mandamus issued from the Supreme Court of the State of Arizona, said Loan Commissioners duly passed and adopted a resolution authorizing the issuance of refunding bonds of the State of Arizona for the purpose of redeeming said Maricopa County Highway Bonds then outstanding. That through proceedings duly and regularly taken under the laws of the State of Arizona, due notice was given and bids were called for by the said Loan Commissioners for the purchase of refunding bonds of the State of Arizona in the principal amount of \$4,100,000. That said Loan Commissioners, to-wit, on February 10, 1943, accepted by resolution incorporated in the Minutes of a Meeting of the Loan Commissioners of the State of Arizona, annexed hereto, marked “Exhibit B”, the joint bid of, and awarded the purchase of said refunding bonds to, Bank of America National Trust and Savings Association, Boettcher and Company, and R. H. Moulton & Company. That notwithstanding said award and sale of said State of Arizona Refunding Bonds, said Loan Commissioners, on February 12,

1943, advised the Board of Supervisors of Maricopa County, in writing, as such Loan Commissioners, that they would not execute or deliver any of said refunding bonds to said purchasers and said Loan Commissioners refused to execute or deliver any of said State of Arizona Refunding Bonds to said purchasers. That thereupon the County of Maricopa, as plaintiff, on March 4, 1943, brought a second original action in mandamus in the Supreme Court of the State of Arizona to compel said Loan Commissioners to call and redeem said outstanding bonds of the County of Maricopa and issue therefor refunding bonds of the State of Arizona as demanded by the Board of Supervisors of Maricopa County by official resolution under date of July 7, 1941.

11. That said second original action filed in the Supreme Court of the State of Arizona, as afore-said, duly came on [119] for hearing and decision, and on April 12, 1943, said Court regularly rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action; and by said peremptory writ of mandamus said Loan Commissioners were directed and commanded to execute and deliver \$4,100,000 refunding bonds of the State of Arizona for the purpose of redeeming a like amount of outstanding Maricopa County Highway Bonds.

12. That in said opinion, a copy of which is annexed to the answers of defendants and marked "Exhibit A", said Supreme Court of the State of Arizona, reaffirming its former decision in the case

of Maricopa County vs. Osborn (1942), Ariz.; 125 Pac. (2d) 703, held and determined that outstanding Maricopa County Highway Bonds in the principal amount of \$4,100,000 were redeemable prior to their respective maturity dates under the provisions of Chapter I, Title 52, Arizona Revised Statutes of 1913, and were refundable by the issuance of State of Arizona Refunding Bonds.

13. That said judgment of the Supreme Court of the State of Arizona rendered and entered April 12, 1942, adjudicates in every material respect, both as to substance and procedure, the right of Maricopa County under the Constitution and statutes of the State of Arizona to redeem and refund \$4,100,000 principal amount of outstanding Maricopa County Highway Bonds herein the subject of litigation.

14. That said judgments of the Supreme Court of the State of Arizona finally determining the law of the State of Arizona in respect of the right of Maricopa County to redeem its outstanding indebtedness are valid and binding on defendants as and constituting the Loan Commissioners of the State of Arizona. [120]

15. That there is no genuine triable issue of material fact herein; that the only issues herein involved are issues of law upon which defendants and all of them are entitled to judgment as prayed for.

16. That by virtue of the decision of the Supreme Court of the United States in the case of Erie R.R. Co. vs. Tompkins (1938), 304 U.S. 64,

58 S. Ct. 817, 82 L.Ed. 118, 114 A.L.R. 1487, these decisions of the Supreme Court of Arizona finally establishing the law of the State of Arizona are, as affiant verily believes, binding and conclusive on this Court. That, accordingly, no federal question is involved in this proceeding and the law of the State of Arizona, which is binding upon this Court, having been finally established by decisions of the Supreme Court of Arizona requires that judgment be entered in favor of defendants.

LESLIE C. HARDY.

Subscribed and sworn to before me this 28th day of April, 1943.

[Seal]

AGNES WESTRA,

Notary Public.

My Commission will expire: July 2, 1943. [121]

EXHIBIT "C"

In the Supreme Court of the State of Arizona

No. 4489

MARICOPA COUNTY, a Municipal Corporation,
Plaintiff,

vs.

SIDNEY P. OSBORN, Governor of the State of Arizona; ANA FROHMILLER, State Auditor, and JOE HUNT, State Treasurer, Constituting the LOAN COMMISSIONERS OF THE STATE OF ARIZONA,

Defendants.

Exhibit "C"—(Continued)

BRIEF OF GUST, ROSENFELD, DIVELBESS,
ROBINETTE AND COOLIDGE, AS AMICI
CURIAE

This brief is filed by the undersigned members of the bar of this court as amici curiae pursuant to an order of the court permitting the same to be filed. It is not our purpose to question generally the statement of facts made by the plaintiff in its brief, nor the correctness of the legal propositions advanced in that brief. We desire to call the attention of the court to what we believe to [122] be a fallacy underlying the theory of the plaintiff's case and the arguments advanced in support of that case.

This fallacy lies in the plaintiff's assuming that the retirement of county and municipal bonds, issued under Chapter 2, Title 52, Civil Code of 1913, is governed by the provisions of Chapter 1 of said Title, rather than by the provisions of the chapter under which said bonds were issued. We believe that the following propositions will make clear to the court that this fallacy permeates plaintiff's theory of this case and that when said fallacy is corrected mandate cannot issue as prayed for:

1. The bonds the plaintiff Maricopa County desires to have refunded by the State Loan Commissioners in this case were issued with a definite maturity date, without provision for call before maturity, in exact compliance with Chapter 2, Title 52, Civil Code of 1913, which contains a complete procedure for the authorization, issuance, payment

Exhibit "C"—(Continued)

and retirement of county and other municipal bonds.

2. The provisions of Section 5252, contain- [123] ed in Chapter 1, Title 52 Civil Code of 1913, making it the duty of the State Loan Commissioners to issue new bonds for the purpose of paying, redeeming and refunding existing indebtedness when the same can be issued at a lower rate of interest than previously paid, do not apply to unmatured bonds, unless such bonds are subject to call or are voluntarily surrendered by the holders.

3. The provisions of Section 5253, Chapter 1, of Title 52, Civil Code of 1913, providing that the state reserves the right to redeem at par bonds in their numerical order fifteen years after the date thereof, apply only to bonds issued by the State Loan Commissioners for state indebtedness and do not apply to bonds issued by counties or municipalities, under the provisions of Chapter 2 of Title 52, Civil Code of 1913.

4. The provision in Section 5260, in Chapter 1 of Title 52, Civil Code of 1913, authorizing the State Loan Commissioners on demand from the Board of Supervisors or municipal or school districts, to provide for the redeeming or refunding of county, municipal or school district indebtedness in the same manner as [124] other state indebtedness, refers only to the procedure for refunding and does not write into county and municipal bonds issued under Chapter 2, Title 52, Civil Code of 1913, the reservation of the right to redeem bonds issued

Exhibit "C"—(Continued)

by the Loan Commissioners reserved to the state by Section 5253 of Chapter 1 of said Title 52.

5. The provisions of Section 5273, Chapter 2, Title 52, Civil Code of 1913, providing a date of maturity for bonds to be stated in the call for the election and the provisions of Section 5279 in said Chapter 2, providing for the levy of a tax to pay said bonds until they mature and the provisions of Section 5281 in said Chapter, providing for the retirement of such bonds after maturity cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252 and 5253 in Chapter 1 of said Title 52, (a) for the reason that they do not refer to the same kind of bonds, (b) such implied repeal is not presumed unless the two provisions cannot stand together, (c) Sections 5273 and 5279 and several other sections of Chapter 2 were enacted after Chapter 1, (d) Chapter 29 Laws [125] of 1912 First Special Session, being the original enactment of Chapter 1, Title 52, did not comply with the constitutional provision relating to amending acts and (e) the provisions of both chapters are preserved for operation in their respective fields by the code revisions of 1913 and 1928.

6. Admitting that it is the duty of the Loan Commissioners to proceed to refund county bonds on the request of the county under the provisions of Section 5260, Chapter 1, Title 52, Civil Code of 1913, the mandate in this case cannot be granted because Maricopa County does not show that it has

Exhibit "C"—(Continued)

any bonds to be refunded as the bonds in question are not yet due and are not subject to call before maturity.

7. Mandamus should not issue to require the Loan Commissioners to proceed under the provisions of Section 5260, Chapter 1, Civil Code of 1913, until Maricopa County has established its right to call the bonds in question by appropriate proceedings against the bondholders for until such right is established, there is no plain and clear duty on the part of the State Loan Commissioners to proceed.

ARGUMENT [126]

Proposition number 1 stated above, to the effect that the bonds of Maricopa County which said county desires to refund, were issued with a definite maturity date without provisions for calling before maturity in exact compliance with Chapter 2, Title 52, Civil Code 1913, is clear from an examination of Sections 5266 to Section 5281, both inclusive. Said sections provide a complete procedure for authorization by the electors, the issuance, payment and retirement of county, school district and municipal bonds. No aid from Chapter 1 of said Title 52 is required to provide for such authorization, issuance, payment or retirement of said bonds. Section 5273 expressly requires that the call for the election shall set forth among other things the term of the bonds and the date of maturity of the bonds. Section 5274 says that the bonds shall be payable at a date not to exceed forty

Exhibit "C"—(Continued)

years from the date of their issuance. Section 5279 provides that the tax to be levied shall provide a fund for the redemption of the bonds when they mature and Section 5281 provides that when the bonds shall mature it shall be the duty of the county or city or town treasurer, [127] as the case may be, to give notice for four weeks in some newspaper, of the intention to redeem such bonds, and for the application of money on hand to such redemption. Clearly the provisions of these sections authorize the officials of the counties and municipalities, when so directed by the electors at an election, to make bonds payable at a definite maturity date without provision for prior call and when they have so issued bonds a contract has been entered into by the purchasers of these bonds with the county or municipality that cannot be set aside at a later date by either party because the exigencies of finance make it profitable to escape from the contract. That such a contract may be desirable for the sellers of the bonds for the reason that they will bring a better price than if subject to call at any time is pointed out by the courts in the following cases:

Fales vs. Multnomah County, 248 Pac. 151, 153.

State vs. Kansas City, 204 Pac. 690, 691.

Mitchell vs. Knox County Fiscal Court, 177 S.W. 279, 286.

In the *Fales* case, *supra*, the court says: [128]

"Callable bonds, sometimes called redeemable or

Exhibit "C"—(Continued)

optional bonds, which kind of school bonds are provided for by section 5062, Or. L., being the Act of 1913, 'redeemable at the pleasure of the (school) district but due and payable absolutely twenty years from date,' are denominated term bonds, which may be called for payment before their maturity. This is in order that the issuing municipality may redeem its indebtedness if it chooses to exercise the option, without being obliged to do so. Very few of such bonds are called for payment before their maturity. They do not sell at the same price as they would for the term without the optional feature, since, for the purpose of computing the selling price or basis, the bond is treated as running only to the optional date and not to maturity."

In the case of *State vs. Kansas City*, *supra*, the court says:

"* * * privilege of short-time prepayment operates in the sale of bonds as a discount of one-half of 1 per cent; and, if the city must write into proposed bonds privilege of prepayment, the aggregate loss on bond issues for the year 1922 will be about \$25,000."

In the *Mitchell* case, *supra*, the court says:

"It is well known that bonds which run for a specified long term, without being subject to redemption before their maturity bring a higher price than bonds that are subject to redemption before their maturity. On the other hand, it is to the in-

Exhibit "C"—(Continued)

terest of the county to have the right to redeem a long-term bond at any time before its maturity. Interest rates may fall, or the county may have funds on hand which it can conveniently apply to the payment of its debts. It is therefore usual, in bonds of this character, to make all or [129] some of them redeemable at some time before their maturity, and after they have run a reasonable length of time. This form tends to make them marketable, at a good price. Furthermore, the statute does not mean that the fiscal court must insert the redemption clause into all of its bonds, but merely that it has the power to do so, and that power involves the right to insert the redemption clause in some bonds, and omit it from others."

Proposition number 2, the second proposition above stated, to the effect that the provisions of Section 5252 of Chapter 1, Title 52, Civil Code of 1913, making it the duty of the Loan Commissioners to issue new bonds for the purpose of paying, redeeming and refunding indebtedness when the same can be issued at a lower rate of interest to the profit and benefit of the state, does not authorize the call and retirement of bonds bearing a definite maturity date, without provision for call and retirement, is established by a comparison of the provisions of said Section 5252 with Section 5253 immediately following. Section 5253 was adopted by the same legislature as adopted Section 5252, but at a later session. If said Section 5252 is to be construed as authorizing the retirement of bonds at any

Exhibit "C"—(Continued)

time whenever the interest rate is such as to make it profitable for the debtor, then the provision in Section 5253, reserving [130] to the state the right to redeem bonds at par after fifteen years, in their numerical order, is not only wholly unnecessary but is positively misleading to the purchasers of the bonds. In view of said Section 5253, Section 5252 must be construed as limiting the right to redeem and refund bonds consistent with Section 5253, that is, giving the right to refund only when the bonds have matured or are callable under the fifteen year provision or are being voluntarily surrendered by the holders thereof. That such is the proper construction of these two sections taken together, is clear from the case of *State ex rel Board of Fund Commissioners vs. Smith*, 96 S. W. (2) 348.

The language to be construed in that case was the following:

“The board of fund commissioners are hereby authorized and empowered to enter into contracts, and to refund any part of the bonded indebtedness of the state, whenever they can do so to the advantage of the state in change of time, terms of payment or interest payment upon the indebtedness which it is proposed to refund,”

and the court in construing the same said the following:

“Or, stated differently, if section 11500 authorizes the calling and redemption of any and all outstanding bonds at any time advantage will thereby result to the state, [131] and that section is to be read into

Exhibit "C"—(Continued)

all bonds issued subsequent to the enactment of that section, then all such bonds must certainly be option bonds of the character described in section 11499 and the latter section rendered meaningless. No such intention will be charged to the Legislature by the courts if it can be avoided. The only possible construction which can be given section 11500 which will not render section 11499 nugatory is that the former section applies only to the refunding of nonoption bonds at their stated maturity or by contractual agreement, and to the refunding of option bonds during the period of the option when advantage to the state will result. Such a construction is reasonable and in entire accord with the principle expressed by the General Assembly in the following introductory words of its Act of March 31, 1885: 'Whereas, the maintenance of the credit of the state is of the utmost importance and should ever be guarded with the most jealous care.' Laws 1885, p. 39.

"It is not only possible, but is very probable, that when the General Assembly authorized the fund commissioners to refund any part of the bonded indebtedness of the state, 'whenever they can do so,' etc., it was understood that bonds then outstanding, or which might thereafter be issued, containing the solemn promise of the state to pay interest at an agreed rate for a definite length of time, constituted such an insurmountable and clearly recognized obstacle to the changing of the contract without the agreement of both parties that it was not deemed

Exhibit "C"—(Continued)

necessary to incorporate the exception in the act.

"(3) The bonds herein involved, having a definite maturity date stated therein, containing the unqualified promise to pay interest at a stated rate for a definite length of time, and issued under constitutional authority containing as its only direction relative to maturity the words, 'and maturing not later than thirty-five (35) years from their date' (section 44d, art. 4, Const. see Laws Mo. 1933-34, Ex. Sess., p. 174), are not option bonds and cannot [132] be refunded, prior to maturity except by agreement. Since the bonds are not due and there is no agreement that they may be refunded, it necessarily follows that the Board of Fund Commissioners is without authority to issue refunding bonds for the purpose of refunding the present issue."

96 S. W. (2) 351.

Proposition number 3 above stated, to the effect that the provisions of Section 5253, Chapter 1 of Title 52, Arizona Civil Code of 1913, providing that the state reserves the right to redeem at par bonds in their numerical order fifteen years after date thereof, apply only to bonds issued by the State Loan Commissioners for state indebtedness and do not apply to bonds issued by the counties or municipalities, under the provisions of Chapter 2, Title 52, Civil Code 1913, is obvious. Sections 5251 and 5252 immediately preceding Section 5253 refer only to outstanding and existing indebtedness of the State of Arizona or the Territory of Arizona assumed by the state, and such state indebtedness as may be or

Exhibit "C"—(Continued)

is now authorized by law, and to subsisting state legal indebtedness, and the said Section 5253 refers to said bonds thereby clearly indicating Section 5253 applies to the bonds mentioned in the preceding two sections. Furthermore, a [133] comparison of the provisions of Section 5253 with Section 5273 in Chapter 2 of said Title 52 shows that Section 5253 is not intended to apply to county and municipal bonds, for the maximum rate of interest permitted by Section 5253 is 5% while Section 5273 permits a maximum of 6% for county and municipal bonds, and a comparison of Section 5253 with Section 5274 shows that the maximum term for bonds issued under Section 5253 is 25 years, while the maximum term for county and municipal bonds is forty years. Furthermore, the bonds mentioned in Section 5253 must be signed by the Loan Commissioners, while the county and municipal bonds issued under Section 5274 must be signed and attested when issued by the county by the chairman and clerk of the board of supervisors, when issued by school districts by chairman and clerk of the board of school trustees and must be countersigned by the chairman of the board of supervisors of the county, and when issued by a city or town must be signed by the mayor and city clerk of such city or town. A comparison of Section 5253 with Section 5260 further discloses the fact that the faith and credit of the state is pledged for the [134] payment of the bonds and the interest accruing thereon as to bonds issued under Section 5253, but as to county and municipal bonds

Exhibit "C"—(Continued)

refunded by the Loan Commissioners pursuant to Section 5260 payment of the bonds is required from the funds of the county, municipality or school district only. A comparison of Section 5253 with Section 5277 shows that the bonds referred to by Section 5253 must be registered by the State Auditor in a book to be kept by him for that purpose, and the county and municipal bonds issued in pursuance of Chapter 2 of Title 52 must be entered upon the record of proceedings of the governing body of the school district, city or town, or other municipal corporation disposing of the same.

It being thus clear that most of the provisions in Section 5253 cannot pertain to county and municipal bonds issued under Chapter 2 of Title 52, it is, indeed, a far stretch to contend that the provision for reservation of the right of redemption must be imported into the county and municipal bonds issued under Chapter 2, but even that provision reserving the right to redeem is inconsistent with Section 5281 found in Chapter 2, for said [135] provision to redeem in Section 5253 reserves the right to redeem after fifteen years from date of issue and Section 5281 provides for redemption when the bonds shall mature, and under Section 5274 of Chapter 2 county and municipal bonds may mature at any time from one to forty years after their date of issuance.

Proposition number 4 to the effect that the provision in Section 5260, in Chapter 1 of Title 52 of the Civil Code, 1913, authorizing the State Loan

Exhibit "C"—(Continued)

Commissioners, on demand from the board of supervisors or the proper authorities of municipalities or school districts, to provide for the redeeming or refunding of county municipal or school district indebtedness in the same manner as other state indebtedness, refers only to the procedure for refunding and does not write into county and municipal bonds issued under Chapter 2, Title 52, Civil Code, 1913, the reservation of the right to redeem bonds issued by the State Loan Commissioners, reserved to the state by section 5253 of Chapter 1 of said title 52, seems clear from the language used. Said section 5260 does not provide that counties, municipal- [136] ities and school districts shall reserve the right to redeem or refund their bonds at the same time or times that state bonds may be redeemed or refunded, but provides only that the "Loan Commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said counties, municipalities or school districts upon official demand of said authorities." This language is not capable of being construed as making county and municipal bonds redeemable or callable at the time provided by Section 5253 for state bonds. It is well settled by the authorities that the phrase "In the same manner" is not applicable to substance but only to procedure

Exhibit "C"—(Continued)

and is the equivalent of saying by "similar proceedings so far as * * * applicable to the subject matter," *Commonwealth vs. Hildebrand*, 11 Alt. (2) 688. In this case the court said:

"The phrase 'in the same manner,' however, has a well-understood meaning in statutory construction and its restrictive or limiting [137] force applies not to substance, but to procedure only; it is the equivalent of saying 'by similar proceedings, so far as * * * applicable to the subject-matter.' *Wilder's S. S. Co. v. Low*, 9 Cir., 112 F. 161, 164, *Durousseau v. United States*, 6 Cranch 307, 317, 3 L. Ed. 232. If the legislature had intended that appeals under both sects. 404 and 410 should not only be held in the same manner, but should be subject to the same limitations of appellate review, it is probable that the legislature would have so indicated."

Proposition number 5, above stated, to the effect that the provisions of 5273 providing a date of maturity for bonds to be stated in the call for election and provisions of Section 5279 providing for the levy of a tax to pay said bonds until they mature, and the provisions of Section 5281 providing for the retirement of such bonds after maturity, cannot be held to have been repealed by the provisions for refunding and the provisions reserving the right to call bonds contained in Sections 5252 and 5253, Chapter 1 of said Title 52, is very clear for several reasons. In the first place as has been pointed out, the provisions in Chapter 2 refer to an entirely

Exhibit "C"—(Continued)

different kind of bond than do the provisions in Chapter 1.

In the second place, no express repeal being made, an implied repeal will not be pre- [138] sumed, unless the two provisions cannot stand together. *Southern Pacific Company v. Gila County*, 109 Pac. (2) 610, in which case this court quotes the rule laid down in its former decisions, as follows:

"It should also be borne in mind that repeals by implication are not favored and will not be indulged if there is any other reasonable construction."

Furthermore, while the main portion of Chapter 2, Title 52, Civil Code 1913, first originated in Chapter 29 Session Laws 1912, Regular Session, and the main provisions of Chapter 1, Title 52, Civil Code of 1913, first originated in Chapter 29 of Session Laws of 1912, First Special Session, yet some of the provisions in said Chapter 2 were first enacted by Chapter 22, Session Laws of 1913, Third Special Session, so it is hard to say which of the two chapters is the later enactment. Be that as it may, the later act did not comply with the constitutional provision for amending the prior act and, hence, ought not to be construed as having the effect of amending the prior act, if that can be avoided. *State vs. Kansas City*, 204 Pac. 690, 691. Lastly, the provisions of all of the original acts were inserted in the revisions of 1913 and 1928 [139] and by reason of such insertion in such revisions both chapters must be given effect as far as possible on the

Exhibit "C"—(Continued)

presumption that the legislature intended that each should be preserved to operate in its particular field.

Sou. Pac. R. R. Co. v. Gila County, 109
Pac. (2) 610, 611.

Proposition number 6 stated above, to the effect that while it is the duty of the Loan Commissioners to proceed to refund county bonds on the request of the county under the provisions of Section 5260, Chapter 1, Title 52, Civil code of 1913, the mandate cannot issue in this case because Maricopa County does not show that it has any bonds to be refunded as the bonds in question are not yet due and are not subject to call before maturity, necessarily follows from what has been stated above under the five preceding propositions. It is obvious from the present rate of interest on municipal bonds and from the allegations of the plaintiff's complaint that the holders of the bonds in question will not voluntarily surrender them at the present time and if the views we have above expressed are correct, said bonds are not callable or redeemable until their respective dates of maturity, as [140] such dates were approved by the electors at the election and as they were definitely fixed in the bonds in pursuance of Chapter 2, Title 52, Civil Code of 1913, under which they purport to be issued, and were in fact issued. If we are right in our construction of the statutes involved, Maricopa County has no more right to compel the holders of these bonds to accept present payment merely because the county can save money by doing so than the bondholders had the

Exhibit "C"—(Continued)

right a few years ago when the county was delinquent in its payments, to compel the county to issue longer term bonds at a lower rate of interest as the bondholders then thought for their best interest. Maricopa County then saw fit to stand on its contract as it was written and we believe the bondholders likewise have the right to stand on the same contract.

Proposition number 7, to the effect that mandamus should not issue to require the Loan Commissioners to proceed under the provisions of Section 5260, Chapter 1, Civil Code of 1913, until Maricopa County has established its right to call the bonds in question by appropriate proceedings against the bondholders, [141] seems obviously a correct statement of law relating to mandamus. The rule repeatedly stated by this court and other courts is unqualifiedly to the effect that mandamus will not issue to compel a public officer to perform an act unless it is his clear duty to do so. *Miners & Merchants Bank vs. Herron*, 46 Ariz. 71, 80; 34 American Jurisprudence Sec. 36, p. 831. If the peremptory writ should issue the Loan Commissioners would be obliged to proceed to issue the refunding bonds. The bondholders, not being bound by this proceeding, would naturally refuse to exchange their bonds and would unquestionably resort to the courts, State or Federal, to establish their contention. Assuming that this court would consider itself bound by a decision made in this case in which most of the bondholders, except the one that we represent, will have had no opportunity for a hearing, the Federal

Exhibit "C"—(Continued)

courts, of course, will not consider themselves so bound and the rule of *Erie v. Tompkins*, 304 U. S. 64, 82 L. Ed. 1188, not applying by reason of a right under the Federal Constitution being involved, the Federal courts will be obliged [142] to construe the statutory provisions in question independently of any determination made by this court. *Jackson County vs. United States*, 308 U. S. 343, 84 L. Ed. 313, 316. The result will be that the Loan Commissioners will have been forced into a long period of litigation by the mandate of this court. We do not believe that this court has the power to issue the writ under those circumstances.

If Maricopa County desires to refund these bonds, there is no obstacle under the provisions of the declaratory judgment act and rules 18a and 23a (Secs. 21-507, 21-524 Ann. Code 1939) of the rules of civil procedure to its bringing an appropriate proceeding against the bondholders to determine their rights under the bonds, which they hold and if it shall be determined in such proceeding that the bonds in question are callable, we do not believe a mandate against the Loan Commissioners will be necessary.

Respectfully submitted,
GUST, ROSENFELD, DIVELBESS,
ROBINETTE AND COOLIDGE.

201 Professional Building, Phoenix,
Arizona,

By J. L. GUST [143]

EXHIBIT "B"

MINUTES OF A MEETING OF THE LOAN
COMMISSIONERS OF THE STATE OF
ARIZONA

A meeting of the Loan Commissioners of the State of Arizona was held pursuant to the foregoing consent to said meeting in the office of the Governor of the State of Arizona, at the Capitol Building, in the City of Phoenix, within the said State of Arizona, at 3:00 o'clock P.M. on the 10th day of February, 1943.

The following, constituting all the members of the Loan Commissioners of the State of Arizona, were present:

Sidney P. Osborn,	Governor
Ana Frohmiller,	State Auditor
J. D. Brush,	State Treasurer

The Governor announced that the Loan Commissioners were convened in meeting for the purpose of considering the bid of Bank of America National Trust & Savings Association, Boettcher and Company and R. E. Moulton & Company, which was filed and submitted to the Loan Commissioners of the State of Arizona by said bidders on February 1, 1943, whereby said bidders bid for \$4,100,000 refunding bonds of the State of Arizona as described and offered for sale in that certain call for bids authorized by the Loan Commissioners of the State of Arizona pursuant to a resolution adopted on November 19, 1942.

Following the discussion and consideration of said bid of Bank of America National Trust & Savings Association, Boettcher and Company and R. H. Moulton & Company, [144] Commissioner Brush offered and moved the adoption of the following resolution:

“RESOLUTION OF THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA SELLING \$4,100,000 PRINCIPAL AMOUNT OF REFUNDING BONDS TO BE ISSUED FOR THE PURPOSE OF REDEEMING A LIKE PRINCIPAL AMOUNT OF BONDS OF MARICOPA COUNTY, ARIZONA; PROVIDING FOR THE REDEMPTION OF OUTSTANDING BONDS OF MARICOPA COUNTY AGGREGATING THE PRINCIPAL AMOUNT OF \$4,100,000; SETTING ASIDE THE PROCEEDS OF THE SALE OF STATE OF ARIZONA REFUNDING BONDS FOR THE PURPOSE OF REDEEMING SAID BONDS OF MARICOPA COUNTY AND DIRECTING NOTICE OF SUCH REDEMPTION TO BE GIVEN

Whereas, the Loan Commissioners of the State of Arizona, heretofore, to-wit, on November 19, 1942, authorized the issuance of \$4,100,000 principal amount State of Arizona Refunding Bonds and directed notice of sale thereof to be given; and

Whereas, such notice of the sale of said Refunding Bonds has been duly given and published and at the

Exhibit "B"—(Continued)

time and place fixed for the receipt of bids, the Loan Commissioners duly met to consider all bids received for the purchase of said bonds and to take such action thereon as might be deemed advisable; and

Whereas, Bank of America National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and Company, duly filed their bid for the purchase of said bonds at the price of par and a premium accompanied by a cashier's check on the First National Bank of Arizona, which is a member bank of the Federal Reserve System, [145] payable to the Treasurer of the State of Arizona in the sum of \$205,000; and

Whereas, said bid for the purchase of said bonds and the bidders' good faith check accompanying the same are satisfactory and in accordance with law and the Board of Supervisors of Maricopa County has, by resolution determined that said bid is satisfactory and should be accepted; and

Whereas, it appears that said bid should be accepted and said bonds awarded as in this resolution provided;

Now, Therefore, Be It Resolved by the Loan Commissioners of the State of Arizona, as follows:

Section 1. Refunding Bonds of the State of Arizona in the aggregate principal amount of \$4,100,000 are hereby awarded and sold to Bank of America National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and

Exhibit "B"—(Continued)

Company in accordance with and subject to the terms and conditions of their said bid as follows, to-wit:

‘February 1, 1943

‘Loan Commissioners of the State of Arizona

Phoenix, Arizona

Gentlemen:

For all, but not less than all of \$4,100,000.00 par value legally issued State of Arizona Refunding Bonds to be dated as of the date of their issuance, [146] to bear interest at the rate of $2\frac{3}{4}$ per cent per annum, payable semiannually January 15 and July 15, of the denomination of \$1,000.00 each, numbered from 1 to 4100, both inclusive, and maturing \$300,000.00 principal amount on July 15 in each of the years 1944 to 1956, both inclusive, and \$200,000.00 on July 15, 1957, all in accordance with your published notice of sale, we bid you the sum of par and accrued interest to date of delivery, together with a premium of \$800.00. We further agree as part of the purchase price that we will waive interest on the Refunding Bonds from the date of their issue to April 15, 1943, this concession on our part being made for the purpose of enabling you to complete the proceedings for the call and redemption of the outstanding bonds of Maricopa County to the end that double interest will not accrue on both the Refunding Bonds and the outstanding Maricopa County bonds. This bid is subject to the following conditions, each of which is hereby made a condition precedent to any liability on our part.

Exhibit "B"—(Continued)

(1) That this bid shall be accepted promptly, and notice thereof given to us, in no event later than 5:00 o'clock P.M., Pacific War Time, February 10, 1943.

(2) That said Refunding Bonds shall be duly executed and delivered to us on payment of the purchase price therefor not later than 12:00 o'clock Noon, Pacific War Time, March 15, 1943.

(3) That in the event that prior to the delivery of said Refunding Bonds to us the income received by private holders from bonds of the same type and character shall be taxable or subjected to tax or be declared to be taxable by the terms of any Federal Income Tax law either by ruling of the Bureau of Internal Revenue or by decision of any Federal Court or by amendment of the Federal Income Tax laws or otherwise, we may at our election be relieved of our obligations under this agreement to purchase said bonds.

(4) The Loan Commissioners of the State of Arizona and the Board of Supervisors of Maricopa County, State of Arizona, will adopt such proceedings and take such action [147] as may legally be required for the purpose of calling and redeeming the outstanding \$4,100,000.00 principal amount of bonds of the County of Maricopa proposed to be refunded from the proceeds of the issuance and sale of said Refunding Bonds of the State of Arizona and that such outstanding bonds of the County of Maricopa to the amount aforesaid will be called and redeemed from the proceeds of the sale of said Re-

Exhibit "B"—(Continued)

funding Bonds (which shall be used for no other purpose) and that interest on said bonds of the County of Maricopa will cease from and after the date fixed for such redemption.

(5) That you will furnish us with a full, true and correct transcript of the proceedings for the issuance of said Refunding Bonds duly certified on the basis of which we will be able to secure at our own expense, at or before the delivery of said Refunding Bonds to us, the unqualified legal opinion of Messrs. Orrick, Dahlquist, Neff & Herrington of San Francisco approving the legality of the proceedings for the issuance of said Refunding Bonds and the proceedings taken or to be taken for the call and redemption of a like principal amount of outstanding bonds of Maricopa County, State of Arizona, in all respects. If our said attorneys are unable to render their opinion approving the legality of said Refunding Bonds and said proceedings for the redemption of said outstanding bonds of Maricopa County in all respects, this bid is to be deemed cancelled and we are to be relieved from all liability hereunder, with like force and effect as though this bid had not been made.

We hand you herewith cashiers check of the First National Bank of Arizona, which is a member bank of the Federal Reserve System, in the sum of \$205,000.00 payable to the order of the State Treasurer of the State of Arizona, to be held in accordance with your advertised notice of the sale of said bonds, but to be returned to us uncashed in the

Exhibit "B"—(Continued)

event you are unable to comply with each and all of the conditions precedent [148] above specified.

Very truly yours,

BANK OF AMERICA NATIONAL
TRUST & SAVINGS ASSOCIA-
TION

BOETTCHER and COMPANY

R. R. MOULTON and COMPANY

By FRANCES MOULTON'

Section 2. This award and the sale of said Refunding Bonds is made subject to the following conditions to which said successful bidders have consented and agreed, to-wit:

The Loan Commissioners shall have the right to deliver said Refunding Bonds to said bidders subsequent to March 15, 1943 if it proves to be impracticable to print, lithograph or execute said bonds prior to said date, or to make delivery thereof prior to said date by reason of litigation or any other cause whatsoever, and any delivery of said bonds made subsequent to said date shall constitute good delivery thereof in accordance with said notice of sale, provided all other terms and conditions of said bid shall have been duly complied with.

Said purchasers shall have the right upon five days written notice to the Loan Commissioners to terminate said extended period of delivery and require that delivery of said bonds be made to them not later than five days from the date of said notice. If such delivery of said bonds is not so made to said purchasers by the State Treasurer or the Loan

Exhibit "B"—(Continued)

Commissioners within the [149] said period of five days from the date of said notice, this sale shall be deemed cancelled and both the Loan Commissioners and said purchasers shall be relieved of all obligations one to the other. The Loan Commissioners shall be under no liability for damages for failure to deliver said bonds to said purchasers in the event of cancellation of this sale nor shall said purchasers be under any liability to the Loan Commissioners or the State of Arizona. In the event of such cancellation of this sale the good faith check of \$205,000 deposited by said bidders shall be promptly returned to said bidders.

Section 3. Forthwith upon the payment into the state treasury of the proceeds of the sale of said \$4,100,000 principal amount of State of Arizona Refunding Bonds, the state treasurer shall apportion them to a special fund which is hereby designated the "Maricopa County Highway Bond Redemption Fund." Out of the moneys in said Maricopa County Highway Bond Redemption Fund the state treasurer shall pay a like principal amount of \$4,100,000 of bonds of Maricopa County designated and referred to in the resolution of the Loan Commissioners adopted November 19, 1942, which is hereby referred to and by reference incorporated herein and made a part hereof. [150]

Section 4. The Board of Supervisors of Maricopa County and the county treasurer thereof shall cause to be deposited with the state treasurer in a special fund which is hereby designated the "Mari-

Exhibit "B"—(Continued)

copa County Highway Bond Interest Fund," the amounts necessary to pay interest on the bonds of Maricopa County called for redemption, from the last interest payment date to the date of redemption. The moneys in said Maricopa County Highway Bond Interest Fund shall be used and applied by the state treasurer for the payment of interest from the last ensuing interest payment date to the date of redemption of said Maricopa County bonds.

Section 5. Forthwith upon the deposit of said proceeds of sale of said State of Arizona Refunding Bonds in said Maricopa County Highway Bond Redemption Fund and said interest moneys in said Maricopa County Highway Bond Interest Fund, it is hereby found and determined that there will be in the state treasury of the State of Arizona a sum sufficient for the redeeming of said outstanding bonds of Maricopa County, State of Arizona, for the redemption of which said State of Arizona refunding bonds are authorized to be issued.

Section 6. Upon the deposit of the funds as provided in Section 5 hereof, the state [151] treasurer of the State of Arizona is hereby authorized and directed to call for redemption and to redeem all of the outstanding bonds of Maricopa County more particularly described in the Notice of Redemption hereinafter set forth. The state treasurer shall cause notice of such call for redemption to be published at least two (2) consecutive times in the "Arizona Weekly Gazette," a newspaper published in the City of Phoenix, the state capitol of the State of Arizona, and in addition thereto

Exhibit "B"—(Continued)

said state treasurer shall cause said notice to be published once a week for one (1) month in three (3) newspapers published in the State of Arizona (no two of which shall be published in the same county), and such notice shall be published in the "Chandler Arizonan," a newspaper published and circulated in the County of Maricopa, State of Arizona, and in the "Nogales International," a newspaper published and circulated in the County of Santa Cruz, State of Arizona, and in the "Casa Grande Dispatch," a newspaper published and circulated in the County of Pinal, State of Arizona. In addition to such publications in the State of Arizona, which are hereby declared to be sufficient and to constitute adequate public notice of such call for redemption, the state treasurer is hereby authorized to [152] cause such Notice of Redemption to be published once in "The Bond Buyer," a publication in the City and State of New York and of general circulation throughout the United States of America among dealers in municipal bonds, and institutions and individuals investors holding municipal bonds, and, also, to cause such Notice of Redemption to be published once in the "Wall Street Journal, Pacific Coast Edition," a newspaper published in the City and County of San Francisco, State of California, and of general circulation throughout the Pacific Coast of the United States among municipal bond dealers, investors and institutional holders of municipal bonds; but no error or informality in such publication in said newspapers published in New York and San Francisco,

Exhibit "B"—(Continued)

respectively, or failure of publication in either or both thereof, shall affect the validity of such call for redemption, provided that notice thereof be published in said newspapers in the State of Arizona for the periods above specified. Said state treasurer is further authorized to cause a copy of such advertised Notice of Redemption to be mailed to Bankers Trust Company of the City of New York, State of New York, and to each bank or trust company or paying agent at which the interest on said bonds of Maricopa County hereby called for redemption was made payable.

Section 7. Said notice of call for redemption shall be substantially in the following form: [153]

NOTICE OF REDEMPTION
MARICOPA COUNTY STATE OF ARIZONA
HIGHWAY BONDS

Notice Is Hereby Given, that pursuant to law and the proceedings of the Board of Supervisors of Maricopa County and the Loan Commissioners of the State of Arizona, all of the following described bonds of Maricopa County, State of Arizona are hereby called for redemption and will be paid on -----, 1943, to-wit:

Name of Bond	Date of Issue	Bond Numbers (all inclusive)
Maricopa County		
Highway Bonds	June 15, 1919	2301 to 4000
Maricopa County		
Highway Bonds	January 15, 1921	6101 to 8500
Said bonds will be redeemed at the face amount		

Exhibit "B"—(Continued)

thereof and accrued interest thereon to and including....., 1943. Said bonds hereby called for redemption must be surrendered on said redemption date (with all interest coupons maturing subsequent to said redemption date) at the office of the state treasurer of the State of Arizona, Capitol Building, Phoenix, Arizona, for payment and cancellation. If any of said bonds hereinabove numbered and described are not presented for payment and cancellation thirty (30) days after the first publication of this notice, to-wit, on or [154] before....., 1943, interest on all such bonds will cease from and after said date.

This notice is given pursuant to proceedings of the Loan Commissioners of the State of Arizona and the concurrent action of the Board of Supervisors of Maricopa County, State of Arizona, adopting and ratifying the same.

Dated, Phoenix, Ariz,, 1943.

State Treasurer of the State
of Arizona

County Treasurer of Mari-
copa County, State of Ari-
zona.

Section 8. If the state treasurer has knowledge of the names and addresses of the holders of any of said bonds hereby called for redemption, said state treasurer is further authorized and directed to de-

Exhibit "B"—(Continued)

posit in the United States Post Office at Phoenix, Arizona, a copy of the foregoing notice of call for redemption, enclosed in a sealed envelope with postage thereon prepaid, addressed respectively to such owner or owners whos names and addresses are known to said state treasurer, each of which notices shall be mailed, as above provided, by depositing the same in the United States Post Office at least thirty (30) days prior to said last mentioned redemption date. [155]

Section 9. Whenever such outstanding bonds of Maricopa County hereby called for redemption are presented for payment, the state auditor shall endorse on each bond the amount due thereon and shall write across the face of each bond the date of its surrender and the name of the person surrendering the same and shall keep proper record thereof, and when the state treasurer pays any of said bonds of Maricopa County so called for redemption, he shall cancel such bonds by perforating the same and indorsing thereon by writing or stamping in ink the words "Redeemed and Cancelled", with the date of concellation, and shall thereupon cause said bonds so cancelled to be delivered to the county treasurer of Maricopa County, who shall give his receipt therefor, and such receipt shall be full acquittance to the state treasurer and the state auditor of the State of Arizona for the application of the moneys in the Redemption Fund hereinabove specified, used and applied for the purpose of redeeming said bonds of Maricopa County.

Exhibit "B"—(Continued)

Section 10. This resolution shall take effect immediately.

Passed and Adopted by the Loan Commissioners of the State of Arizona, on this 10th [156] day of February, 1943.

SIDNEY P. OSBORN

Governor

ANA FROHMILLER

State Auditor

J. D. BRUSH

State Treasurer

Loan Commissioners of the State of Arizona."

The foregoing motion was seconded by Commissioner Frohmiller, whereupon the motion was adopted by the affirmative vote of all the members of the Loan Commissioners of the State of Arizona, voting as follows:

Sidney P. Osborn, Governor	Yes
Ana Frohmiller, State Auditor	Yes
J. D. Brush, State Treasurer	Yes

The Governor thereupon declared that the foregoing resolution had been unanimously adopted by the Loan Commissioners of the State of Arizona.

There being no further business to come before the meeting, upon motion duly made and seconded, the meeting was adjourned.

State Treasurer

Received April 29, 1943

GUST, ROSENFELD,
DIVELBESS, ROBINETTE
& COOLIDGE

[Endorsed]: Filed Apr 29 1943. [157]

In the United States District Court
For the District of Arizona

No. Civil 379

Phoenix

STATE OF WASHINGTON and EQUITABLE
LIFE INSURANCE COMPANY OF IOWA,
Plaintiffs,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED
OGLESBY and PHIL ISLEY, constituting
the Board of Supervisors of Maricopa County,
Arizona; SIDNEY P. OSBORN, Governor,
ANA FROHMILLER, State Auditor, and
DAN E. GARVEY, State Treasurer, constitut-
ing the Loan Commissioners of the State of
Arizona; DAN E. GARVEY, State Treasurer,
and ANA FROHMILLER, State Auditor of
the State of Arizona,

Defendants.

AFFIDAVIT IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT UNDER RULE 56

State of Arizona,
County of Maricopa.—ss.

Earl Anderson, being first duly sworn, deposes
and says:

1. That he is now and was at all the times herein mentioned, and is now, the Chief Assistant Attorney General of the State of Arizona; that in such capacity he is personally familiar with the facts attendant upon the indebtedness of the County of Maricopa in the principal amount of \$4,100,000 of Maricopa County Highway Bonds. That in such capacity he is personally familiar with the powers and duties of the Loan Commissioners of the State of Arizona, said Commissioners being Sidney P. Osborn, Governor of the State of Arizona; Ana Frohmiller, State [158] Auditor of the State of Arizona, and J. D. Brush, State Treasurer of the State of Arizona, in respect of funding, refunding, and redeeming the indebtedness of said State of Arizona, counties, cities, and other municipalities of said State of Arizona, the laws and statutes of said state in relation thereto.

2. That on July 7, 1941, the Board of Supervisors of Maricopa County passed and adopted a resolution officially demanding that the defendants herein, as the Loan Commissioners of the State of Arizona, redeem and refund issued and outstanding Maricopa County Highway Bonds in the aggregate principal amount of \$4,900,000, which aggregate principal amount was outstanding as of said July 7, 1941.

3. That on November 7, 1941, said Loan Commissioners informed the Board of Supervisors of Maricopa County, in writing, that they were unauthorized to refund said outstanding indebtedness of Maricopa County as demanded by Maricopa

County, as aforesaid, and said Loan Commissioners did thereupon refuse to redeem and refund said outstanding Highway Bonds of Maricopa County or to provide for the refunding thereof, and thereupon, to-wit, on February 2, 1942, Maricopa County filed an original action in mandamus in the Supreme Court of the State of Arizona entitled: "Maricopa County, a Municipal Corporation, Plaintiff, vs. Sidney P. Osborn, Governor of the State of Arizona, Ana Frohmiller, State Auditor, and Joe Hunt, State Treasurer, constituting the Loan Commissioners of the State of Arizona, Defendants," No. 4489, to command said Loan Commissioners to redeem and refund said outstanding indebtedness of Maricopa County notwithstanding the refusal of said Loan Commissioners so to do.

4. That said original action filed in the Supreme [159] Court of the State of Arizona, duly came on for hearing and decision, and on May 4, 1942, said court duly rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action; and by said peremptory writ of mandamus said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa County. That said decision is reported in Ariz..... and 125 P. (2d) 703, and holds and determines that Maricopa County Highway Bonds, herein the subject of litigation, are and were at all times subject to redemption and refunding prior to their respective fixed maturity dates by said Loan Commissioners of the State of Arizona. That

for this reason said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa County by the issuance of said peremptory writ of mandamus.

5. That pursuant to said peremptory write of mandamus issued from the Supreme Court of the State of Arizona, said Loan Commissioners duly passed and adopted a resolution authorizing the issuance of refunding bonds of the State of Arizona for the purpose of redeeming said Maricopa County Highway Bonds then outstanding. That through proceedings duly and regularly taken under the laws of the State of Arizona, due notice was given and bids were called for by said Loan Commissioners for the purchase of refunding bonds of the State of Arizona in the principal amount of \$4,100,000. That the Loan Commissioners of the State of Arizona on February 10, 1943, accepted the joint bid of, and awarded the purchase of said refunding bonds to, Bank of America National Trust and Savings Association, Boettcher and Company, and R. H. Moulton & Company.

6. That notwithstanding said award and sale of said State of Arizona Refunding Bonds, said Loan Commissioners, on [160] February 12, 1943, advised the Board of Supervisors of Maricopa County, in writing, as such Loan Commissioners, that they would not execute or deliver any of said refunding bonds, and said Loan Commissioners refused to execute or deliver any of said State of Arizona Refunding Bonds to said purchasers.

7. That thereupon, to-wit, on March 4th, 1943, Maricopa County filed a second original action in mandamus in the Supreme Court of the State of Arizona entitled: "Maricopa County, a body politic and corporate, plaintiff, vs. Sidney P. Osborn, Governor of the State of Arizona; Ana Frohmiller, State Auditor of the State of Arizona, and J. D. Brush, State Treasurer of the State of Arizona, constituting the Land Commissioners of the State of Arizona, defendants," No. 4606, to command said defendants as and constituting the Loan Commissioners of the State of Arizona to execute and deliver said refunding bonds to the purchasers thereof. That said Loan Commissioners duly appeared and made return in said proceedings and filed briefs therein. That said action in said Supreme Court of the State of Arizona duly came on for hearing and decision, and on April 12, 1943, said Court duly rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action. That in said decision said Court reaffirmed its judgment in said prior original mandamus proceeding brought by Maricopa County in the case of Maricopa County v. Osborn, et al, (1942) Ariz....., 125 P. (2d) 703, and held and determined that said outstanding Maricopa County Highway Bonds are and were at all times subject to redemption and refunding by the Loan Commissioners of the State of Arizona prior to their respective fixed maturity dates. That for this reason said peremptory writ of mandamus was issued

by said Supreme Court of the State of Arizona [161] to command said Loan Commissioners of the State of Arizona to execute and deliver State of Arizona Refunding Bonds in the principal amount of \$4,100,000 to the purchasers thereof.

8. That said decisions of the Supreme Court of the State of Arizona are valid and conclusive adjudications to the effect that Maricopa County Highway Bonds are redeemable and refundable prior to their maturity dates under the laws of the State of Arizona. That said decisions are binding and conclusive on defendants as Loan Commissioners of the State of Arizona making it their legal duty to redeem and refund said outstanding indebtedness of the County of Maricopa by the issuance of State of Arizona Refunding Bonds.

9. That by virtue of the decision of the Supreme Court of the United States in the case of *Erie R. R. Co. v. Tompkins* (1938) 304 U. S. 64, 58 S. Ct. 817, 82 L. Ed. 118, these decisions of the Supreme Court of Arizona finally establishing the law of the State of Arizona, as affiant verily believes, are binding and conclusive upon this court in respect of the issues raised in this action.

EARL ANDERSON

Subscribed and sworn to before me this 28th day of April, 1943.

[Seal]

AGNES WESTRA

Notary Public

My Commission will Expire: July 2, 1943.

[Endorsed]: Filed Apr 29 1943. [162]

[Title of District Court and Cause.]

AFFIDAVIT IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

J. L. Gust, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for the plaintiffs in the above entitled cause;

That he has made an examination of the file containing the Acts of the Third Special Session of the First Legislature of the State of Arizona in the Office of the Secretary of State of said State of Arizona, and that he finds in said file the original of the Acts passed by said Legislature at said session, numbered Chapter 20, Third Special Session, First Legislature, and Chapter 64, Third Special Session, First Legislature, and that he has had the Secretary of State of the State of Arizona provide him with certified copies of said Acts, which are attached hereto and made a part hereof.

Affiant further states that said file of the Third Special Session of the First Legislature of the State of Arizona in the Secretary of State's office contains neither the whole nor any part of Chapter 1, Title 52, Arizona Revised Statutes, 1913, entitled "Funding and Refunding";

That affiant has also examined the file of the Acts of the First Special Session of the First Legislature (Session Laws 1912) [163] in the Secretary of State's office and finds among the same Sections

5251, 5252, 5254, 5255, 5256, 5257, 5258, 5259, 5260, 5261, 5262, 5263 and 5264 of said Chapter 1, Title 52 of the Arizona Revised Statutes of 1913.

Affiant further states that he has examined also the Acts of the Second Special Session of the First Legislature in the Secretary of State's office and finds among the same an Act designated as Chapter 2, Laws of 1913, Second Special Session, which is Section 5253 of the Revised Statutes of 1913 and, further, an Act designed as Chapter 50, Laws of 1913, Second Special Session, which is Chapter 5265, Arizona Revised Statutes of 1913.

J. L. GUST.

Subscribed and sworn to before me this 17th day of May, 1943.

[Seal] HAROLD L. DIVELBESS.

My Commission Expires Dec. 27th, 1944. [164]

State of Arizona
Office of the Secretary

United States of America,
State of Arizona—ss.

I, Dan E. Garvey, Secretary of State, do hereby certify that the hereto attached is a true, correct and complete copy of Senate Bill No. 29, Chapter 20, Third Special Session, First Legislature, State of Arizona, entitled:

“AN ACT—ENABLING COUNTIES, SCHOOL
DISTRICTS, CITIES, TOWNS, AND

OTHER MUNICIPAL CORPORATIONS TO BECOME INDEBTED IN AN AMOUNT EXCEEDING FOUR PER CENTUM OF THE TAXABLE PROPERTY THEREIN; TO PROVIDE FOR ELECTIONS THEREFOR; TO PERMIT COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS, AND OTHER MUNICIPAL CORPORATIONS TO ISSUE BONDS FOR SUCH INDEBTEDNESS, AND TO PROVIDE FOR THE MANNER OF THE EXPENDITURE OF THE PROCEEDS OF SUCH BONDS, THE PAYMENT OF INTEREST THEREON, AND THE REDEMPTION THEREOF: TO PROVIDE FOR THE CREATION OF INDEBTEDNESS BY INCORPORATED CITIES AND TOWNS FOR SUPPLYING WATER, ARTIFICIAL LIGHT, AND SEWERS WHEN THE WORKS FOR SUCH WATER, ARTIFICIAL LIGHT, AND SEWERS WHICH ARE OR SHALL BE OWNED OR CONTROLLED BY THE MUNICIPALITY, AND FOR THE REPEAL OF ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH."

All of Which Is Shown by the Original Act as Passed by the Legislature and on File in This Department.

In Witness Whereof I have hereunto set my hand and affixed the Great Seal of the State of Ari-

zona. Done at Phoenix, the capital, this 13th day of May, A.D. 1943.

[Great Seal of the State of Arizona.]

(Signed) DAN E. GARVEY,
Secretary of State. [165]

S. B. 29

AN ACT

ENABLING COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS, AND OTHER MUNICIPAL CORPORATIONS TO BECOME INDEBTED IN AN AMOUNT EXCEEDING FOUR PER CENTUM OF THE TAXABLE PROPERTY THEREIN; TO PROVIDE FOR ELECTIONS THEREFOR; TO PERMIT COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS, AND OTHER MUNICIPAL CORPORATIONS TO ISSUE BONDS FOR SUCH INDEBTEDNESS, AND TO PROVIDE FOR THE MANNER OF THE EXPENDITURE OF THE PROCEEDS OF SUCH BONDS, THE PAYMENT OF INTEREST THEREON, AND THE REDEMPTION THEREOF; TO PROVIDE FOR THE CREATION OF INDEBTEDNESS BY INCORPORATED CITIES AND TOWNS FOR SUPPLYING WATER, ARTIFICIAL LIGHT, AND SEWERS WHEN THE WORKS FOR SUCH WATER, ARTIFICIAL LIGHT AND SEWERS WHICH ARE OR SHALL BE OWNED OR CONTROLLED BY THE MUNICIPALITY AND FOR THE REPEAL OF ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH.

Be It Enacted by the Legislature of the State of
Arizona :

Title 12

Bond Issue by Counties, Cities, Towns and School
Districts for the Purpose of Making Public
Improvements.

Sec. 1; Act 29, Page 61, Laws 1912.

Sec. 1. Whenever it is attempted to increase the aggregate amount of the indebtedness of any county, school district, city, town, or other municipal corporation, so as to exceed four per centum of the value of the taxable property in such county, school district, city, town, or other municipal corporation, such value of taxable property therein to be ascertained by the last assessment for state and county purposes previous to such proposed incurring of such indebtedness, such county, school district, city, town, or other municipal corporation may become indebted in an amount exceeding four per centum of the value of such taxable property in the manner and by compliance with the provisions of this title.

Sec. 2 id.

Sec. 2. Any county, school district, city, town, or other municipal corporation, acting through its [166] board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, may, of its own volition, and must upon petition signed by fifteen per centum of the property tax-payers, who shall in all other respects be qualified electors, in said county, school district, city, town, or other municipal corporation, or-

der an election by the property tax-payers, who in all other respects shall be qualified electors, in such county, school district, city, town, or other municipal corporation, for the purpose of determining whether such indebtedness shall be authorized; provided that the order for the election in any school district shall be made by the board of supervisors in the county where such election shall be held, either upon such petition, or upon request of the board of school trustees.

Sec. 3, *id.*

Sec. 3. At any election so held, if a majority of the property tax-payers, who must also, in all respects, be qualified electors, therein voting at said election, in such county, school district, city, town, or other municipal corporation, shall vote in favor of the creation of an indebtedness in an amount exceeding four per centum of the value of the taxable property in such county, school district, city, town or other municipal corporation, such value to be ascertained as provided in the first section of this title, such county, school district, city, town, or other municipal corporation shall be permitted to become indebted in an amount exceeding four per centum of the value of taxable property therein; provided, that in incorporated cities and towns the value of taxable property herein mentioned shall be taken from the last assessment for city or, town purposes made previous to incurring such indebtedness; and, provided, further, that any incorporated city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding fifteen per centum addi-

tional, for supplying such city or town with water, artificial light, or sewers, when the works for supplying such water, light, or sewers [167] are or shall be owned and controlled by the municipality.

Sec. 4, *id.*

Sec. 4. Whenever the board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, shall order an election for the purpose herein provided, it shall be the duty of said board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, to order such election to be held at the regular voting place, or places, within the limits of said county, school district, city, town, or other municipal corporation, wherein such indebtedness is attempted to be created, not less than thirty nor more than sixty days from the date of said order; provided, whenever an election shall be held for the purpose of creating an indebtedness by a county, or school district, such order shall be made by the board of supervisors of the county wherein such election shall be held.

The order thus made shall prescribe the object of such election, as prescribed in the eighth section of this title, and shall be held to be *prima facie* evidence that all of the provisions necessary to give it validity or qualify such board of supervisors, city or town council, or the governing body of any other municipal corporation, to make such order have been fully complied with.

Sec. 5, *id.*

Sec. 5. Said board of supervisors, city or town council, or the governing body of any other municipal corporation shall cause to be posted at least five copies of such order in public places within the county, school district, city, town, or other municipal corporation wherein such election is to be held, at least twelve days prior to the date of the election, and shall post a copy of said notice at each polling place within the county, school district, city, town, or other municipal corporation; provided, that in addition to the posting of such notice, publication of a copy thereof shall be made in some newspaper designated by said board of supervisors, mayor of said city or town, or the executive officer of any other municipal corporation, for at least thirty days prior to the date of such election. [168]

Such election shall be held in conformity with the provisions of the general election laws of the state and by the officers of election provided to be appointed by, and who shall qualify, under such laws; the return of said election in the case of a county, or school district, shall be made to the board of supervisors of the county wherein such election is held, and, in any other case, to the city or town council or other governing body of any other municipal corporation within twelve days from the date of such election; whereupon, the board of supervisors, city or town council, or the governing body of any other municipal corporation shall hold a special meeting on the first Monday succeeding said twelfth day for the purpose of canvassing the vote cast at said election; and they shall immediately thereafter by the

certificate in the next section of this title, provided, declare the result of said election.

Said certificate of the result of election, so made, shall be *prima facie* evidence of the complete performance of all of the conditions and requirements precedent to the holding of such election.

Sec. 6, *id.*

Sec. 6. At any election so held, if a majority of the property tax-payers, who must also in all respects be qualified electors, therein voting at said election, in such county, school district, city, town, or other municipal corporation, shall vote in favor of the creation of an indebtedness in excess of four per centum of taxable property, the value of such taxable property to be ascertained as herein prescribed, it shall be the duty of the board of supervisors, city or town council, or the governing body of any other municipal corporation (at the time prescribed in section 5 hereof) to file and record in the office of the county recorder of such county wherein such election is held, a certificate showing the object of such election, the total number of votes cast at such election, the total number of votes cast in favor of the creation of such indebtedness and the total number of votes cast against the creation of such indebtedness; and such certificate shall contain a further statement that the creation of such indebtedness is ordered; and thereupon it shall immediately become the duty [169] of such board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corpo-

ration, to take such steps as are in this title required to carry out the object of such election.

Sec. 7, *id.*

Sec. 7. No political subdivision or municipal corporation other than the subdivision or municipal corporation wherein the election shall be held as above prescribed, for the creation of any indebtedness herein provided for, shall in any manner be responsible for, or charged with, the payment of any of the principal sum or interest thereon evidenced by such indebtedness.

Sec. 8, *id.*

Sec. 8. Whenever any county, school district, city, town, or other municipal corporation, shall desire under the provisions of this title to issue bonds or other evidences of indebtedness of said county, school district, city, town, or other municipal corporation, the board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, may, with the assent of a majority of the property tax-payers, therein voting at said election, in such county, school district, city, town, or other municipal corporation, given in the manner herein provided, issue and sell bonds of said county, city, school district, town, or other municipal corporation, as herein provided, in the amount of indebtedness authorized at said election to be created; provided that in the call for said election hereinbefore in the second section of this title, required to be made, there shall be set forth the aggregate amount of said bonds, the term thereof, the rate of interest

to be paid thereon, when such interest shall be paid, the date of maturity of said bonds or other evidences of indebtedness, and the purposes for which the money derived from the sale of such bonds or other evidences of indebtedness shall be expended.

No bonds or other evidences of indebtedness authorized to be issued shall bear interest at a rate exceeding six per centum per annum.

Sec. 9, *id.*

Sec. 9. Whenever an issuance of bonds or other evidence of indebtedness shall have been authorized under the provisions of this title, it shall become the duty of the county board of supervisors in behalf of the county or board of school trustees, city or [170] town council or the governing body of any other municipal corporation issuing said bonds or other evidences of indebtedness, to cause said bonds to be prepared in the amount and of the denominations so authorized, which bonds, or other evidences of indebtedness shall bear the date of their issuance, shall be numbered consecutively from one upwards, and shall be signed and attested by the following persons, to-wit: when issued by the county, by the chairman and the clerk of the board of supervisors; when issued by a school district, by the chairman and clerk of the board of school trustees, countersigned by the chairman of the board of supervisors of the county wherein such school district is situated; when issued by a city or town, by the mayor and the city clerk of such city or town; and when issued by any other municipal

corporation, by the executive officer and clerk of the governing body of such other municipal corporation, with the corporate seal of any such political sub-division or municipal corporation, if there be one, affixed thereto; and said bonds shall be payable at a date not to exceed forty years from the date of their issuance.

Sec. 10, *id.*

Sec. 10. Said bonds shall be payable to bearer, and coupons for the interest shall be attached to each of said bonds so that the same may be removed therefrom without mutilating the bonds, and each of said coupons shall bear a facsimile of the signature of the officers in the preceding section hereof mentioned as said signatures appear upon said bonds; provided that it shall not be necessary to impress upon any such coupon the seal hereinbefore mentioned.

Sec. 11, *id.*

Sec. 11. Before the sale of any of such bonds or other evidences of indebtedness, the board of supervisors, in behalf of the county or of the board of school trustees, or the city or town council, or the governing body of any other municipal corporation, as the case may be, shall at a regular meeting, or at a special meeting called for [171] that purpose, cause to be entered upon the record of said body an order directing the sale of said bonds or other evidences of indebtedness, and the date and hour of said sale, and shall cause a copy of said order to be published for at least four consecutive weeks

before said sale in such daily or weekly newspaper or newspapers as may be designated by said body, together with a notice that sealed proposals will be received by them for the purchase of said bonds, or other evidences of indebtedness, on the date and hour named in said order.

Said governing body shall, at said time, and at a meeting to be held for such purpose, open all sealed proposals received by them, and shall award the purchase of said bonds to the highest and best responsible bidder; provided, that none of said bonds or other evidences of indebtedness shall be sold for a less amount than par with accrued interest. All bids or proposals received for the purchase of said bonds, or other evidences of indebtedness, shall be accompanied by a certified check for a sum not less than five per cent of the total amount of such bid, and such governing body shall have the right to reject any and all bids, and all such certified checks accompanying bids which are not accepted, and which are rejected, shall be returned to the party tendering the same.

The certified check so deposited by the successful bidder shall be retained by said board of supervisors, or city or town council, and shall be forfeited in the event that such bidder shall not carry out the terms of the contract provided herein to be entered into; provided, however, that such forfeiture shall not be deemed or taken as stipulated or liquidated damages for a breach of said contract and shall not prevent such board of supervisors,

[172] or city or town council, from recovering damages under said contract.

Sec. 12, *id.*

Sec. 12. The amount of bonds sold, their numbers and dates shall be entered upon the record of the proceedings of the governing body of the county, school district, city, town, or other municipal corporation, disposing of the same.

Sec. 13, *id.*

Sec. 13. After said bonds or other evidences of indebtedness are issued, if such indebtedness is created by a county, or a school district situated therein, and until all of said bonds or other evidences of indebtedness of such county are redeemed, the board of supervisors of such county where such indebtedness is created under the provisions of this title, and the city or town council, or the governing body of any other municipal corporation, creating such indebtedness under the provisions of this title, if such bonds or other evidences of indebtedness are issued by such city or town, is authorized and it shall be its duty to levy and cause to be collected a tax in addition to the amount of taxes which now or may hereafter be authorized by law for state and county purposes, at the same time and in the same manner as other taxes are levied and collected by such county, city, or town upon all taxable property in such county, school district, or city, town or other municipal corporation, sufficient to pay the interest on all bonds issued when such interest shall become due, and said tax when

collected shall constitute a fund for the payment of the interest on said bonds or other evidences of indebtedness and shall be called "Interest Fund."

Sec. 14, *id.*

Sec. 14. The board of supervisors of any county wherein any indebtedness shall be created under the provisions of this title, either by the county or by any school district situated therein, and the council of any incorporated city or town, shall also and in [173] addition to the taxes for state and county purposes, or the taxes for city and town purposes, as the case may be, and the tax hereinabove provided to be levied for the payment of interest on such bonds or other evidences of indebtedness, levy a tax for the purpose of redeeming said bonds or other evidences of indebtedness when the same shall mature, as specified in the order and call for election hereinbefore in this title provided to be made, and all money derived from the levy of the tax in this section provided for, when collected, shall constitute a fund and shall be called the "Redemption Fund", and shall be used for the redemption of said bonds or other evidences of indebtedness according to the number of their issue. The tax in this section provided to be levied, shall be levied annually so as to provide a fund for the redemption of such bonds or other evidences of indebtedness when the same shall mature.

S. B. 86, 1st Leg., 3rd Sess., Sec. 1.

Whenever the owner of any coupon bond issued pursuant to the provisions of this title shall present such bond to the state auditor with the request for

the conversion of such bond into a registered bond, the state auditor shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such bond so presented, either upon the back or the face thereof; as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, any such bond may be transferred by such registered owner in person or by attorney duly authorized, on presentation of such bond to the state auditor and the bond again registered as before, a similar statement being stamped, printed or [174] written thereon. Such statement stamped, printed or written upon any such bond may be substantially in the following form:

(Date, giving month, year and day.)

This bond is registered pursuant to the statutes in such case made and provided in the name of.....
....., and the interest and principal thereof are hereafter payable to such owner.

State Auditor.

If any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The state auditor shall enter in the register of said bonds kept by him pursuant to the provisions of this title, or in a separate book, the fact of the registration of such bond and in whose name respectively, so that

said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

Sec. 15, Act 29, Page 61, Laws 1912.

Sec. 15. When any bonds or other evidences of indebtedness created under the provisions of this title shall mature, it shall be the duty of the county treasurer, when such bonds shall have been issued by the county or any school district, and of the city and town treasurer, as the case may be, when any such bonds shall have been issued by any incorporated city or town, to give notice for four weeks in some newspaper published in the county in which such bonds or other evidences of indebtedness shall have been issued, of the intention of such county, school district, city, or town to redeem such bonds, stating the amount thereof, and such redemption shall be made by the county, city, or town, as the case may be, and all said bonds or evidences shall cease to draw interest at the expiration of four weeks after the date of said notice, and if such bonds so noticed for redemption shall not be presented [175] for redemption within three months from the date of such notice, said county treasurer, or city or town treasurer, as the case may be, shall apply said money to the redemption of the bonds next in the order of the number of their issue.

When any interest shall be due upon any of said bonds or other evidences of indebtedness, under the provisions of this title, the coupons due and payable shall be delivered to the county, city, or town treas-

urer, as the case may be, who shall pay the same and write the word "Cancelled" across the face thereof, and said coupons so paid and cancelled shall be said treasurer's receipt for the payment of the same, and when any of said bonds or other evidences of indebtedness shall be paid and redeemed, said treasurer shall in like manner mark them "Cancelled" on the face thereof over his signature, and immediately deliver the same to the clerk of the said board of supervisors, or city or town council, as the case may be, taking his receipt therefor, and said clerk upon receipt of said cancelled bonds or other evidences of indebtedness shall file the same in his office and report the same to the board of supervisors, or city or town council, as the case may be.

The board of supervisors, city or town council, as the case may be, of any county, school district, city or town, issuing bonds or other evidences of indebtedness under the provisions of this title shall, by resolution entered upon its minutes, prior to the offering for sale of said bonds or other evidences of indebtedness, and within a period of fifteen days from the canvassing of the vote of the election herein provided for, prepare a form of bond, which shall substantially conform to the description of said bonds mentioned in the order required by this title to be published and recorded.

Sec. 16, *id.*

Sec. 16. If any bonds or other evidences of indebtedness shall be issued and sold by any county,

school district, city, town, or other municipal corporation, under the [176] provisions of this title, for the purpose of erecting and furnishing any public building within such county, school district, city, town, or other municipal corporation, the board of supervisors, in the event such public building shall be erected and furnished by the county or school district, and the city or town council in the event such public building is to be erected and furnished by a city, town, or other municipal corporation, shall, within the period which it is required under the provisions of the preceding section of this title, prepare and adopt a form of bond or other evidences of indebtedness, adopt plans and specifications for such building, and said board of supervisors, city or town council, as the case may be, shall, as soon as may be practicable after the adoption of such plans and specifications, advertise for bids for the erection and furnishing of said building.

The notice of advertisement for such bids shall set a day and hour, not less than forty days from the date of such notice, when said bids shall be received and opened, and said board of supervisors, city or town council, as the case may be, shall award the contract for the erection and furnishing, or the erection or furnishing of said building to the lowest and best responsible bidder, provided that any and all bids so submitted may be rejected. In the event any bid shall be accepted, said board of supervisors, city or town council, as the case may be, shall require the person or persons to whom such award or contract has been let, to enter into a written

contract with said board of supervisors, city or town council, as the case may be, for the erection and completion of said building and the furnishing thereof, and shall require such person or persons entering into such contract to give bonds to said county, city or town, for the amount of the contract, [177] with two or more sufficient sureties, or give a surety company bond in a like manner, conditioned upon the faithful performance of the contract, such bond to be approved by the board of supervisors, city or town council, as the case may be.

Such board of supervisors, city or town council, as the case may be, may agree to pay and pay upon such contract as follows: Upon the completion of one-third of the work, one-fifth of the contract price; upon completion of two-thirds of the work, an amount sufficient with the prior payment to make one-half of the contract price; and the balance of the contract price shall be paid upon the completion and acceptance of the buildings and the furnishing thereof under said contract by said board of supervisors, city or town council.

In the event that it shall be deemed necessary in conjunction with the erection of the buildings herein mentioned to purchase a building site or sites, the call for the election shall state the proportion of the total amount of the fund to be derived from the issuance and sale of bonds or other evidences of indebtedness which shall be expended in the purchase of such building site or sites.

Sec. 17, id.

Sec. 17. Any incorporated city or town, with the assent of the qualified voters, as provided in the third section of this title, may be allowed to issue bonds or other evidences of indebtedness not exceeding fifteen per cent additional, for supplying such city or town with water, artificial lights, or sewers, when the works for supplying such water, artificial lights, or sewers, are or shall be owned or controlled by the municipality.

Sec. 18, id.

Sec. 18. The expenses of all proceedings had, [178] under this title, shall be borne by the county, school district, city, town, or other municipal corporation, instituting the proceedings necessary and required hereunder; provided, however, that in the event the bonds or other evidences of indebtedness herein authorized shall be sold, such expenses shall be deducted from the proceeds of the sale of such bonds or other evidences of indebtedness.

Sec. 1, S. B. 38, 1st Leg. 3rd Sess. 1913.

Sec. 19. Nothing in this title contained shall be construed to prevent any county, school district, city, town, or other municipal corporation from creating an indebtedness not exceeding four per centum of the value of the taxable property in such county, school district, city, town, or other municipal corporation; provided, that if such county, school district, city, town, or other municipal corporation shall desire to fund such indebtedness by the issuance of bonds therefor, said bonds shall be issued in all respects in conformity with the provisions of this

title; and, provided, further, that it will not be necessary to hold the election required to be held herein; provided, that bonds may be issued under the provisions of this title, for the construction and reconstruction of roads, bridges and highways; for the construction of public buildings, and for any other lawful or necessary purpose. The enumeration of the above mentioned purposes shall not be deemed as restrictive of the right to issue bonds for other purposes, but rather in furtherance thereof. In case any county in the State of Arizona shall have called or held an election for the issuance of bonds, as herein provided, prior to the becoming effective of the provisions of this section, said election shall be and is hereby deemed to have been called and held pursuant to the provisions of this title, and the bonds [179] that may be hereafter issued pursuant to such election, shall be in all respects as valid and legal as though the provisions of this section had been in force at the time of said election.

Sec. 20. All Acts and parts of Acts in conflict with this Act are hereby repealed.

Sec. 21. This Act shall take effect from and after the first day of October, 1913.

Apr 24 1913

Read third time in full and passed by following vote:

28 ayes, —nays, 4 absent, 3 excused.

(signed) H. H. LINNEY

Speaker of the House

Passed the Senate April 17, 1913, by a vote of 17 ayes, 2 noes, — absent — excused.

(signed) M. G. CUNNIFF

President of the Senate

Approved April 29th, 1913:

(signed) GEO. W. P. HUNT

Governor of Arizona. [180]

STATE OF ARIZONA
OFFICE OF THE SECRETARY

United States of America

State of Arizona—ss.

I, Dan E. Garvey, Secretary of State, do hereby certify that the Hereto Attached Is a True, Correct and Complete Copy of Senate Bill No. 60, Chapter 64, Third Special Session, First Legislature, State of Arizona, Entitled:

“AN ACT — TO PROVIDE FOR THE ARRANGEMENT, COMPILATION AND INDEXING OF THE LAWS OF THE STATE OF ARIZONA, AND THE PUBLICATION THEREOF, AND TO EXTEND THE TERM OF OFFICE OF THE PRESENT CODE COMMISSIONER, AND TO DEFINE HIS POWERS AND DUTIES, AND MAKING AN APPROPRIATION FOR HIS COMPENSATION AND THE COMPENSATION OF STENOGRAPHERS TO BE EMPLOYED BY HIM.”

All of Which Is Shown by the Original Act as Passed by the Legislature and on File in This Department.

In Witness Whereof I have hereunto set my hand and affixed the Great Seal of the State of Arizona. Done at Phoenix, the capital, this 13th day of May, A. D. 1943.

(Great Seal of the
State of Arizona)

DAN E. GARVEY

Secretary of State [181]

AN ACT

TO PROVIDE FOR THE ARRANGEMENT, COMPILATION AND INDEXING OF THE LAWS OF THE STATE OF ARIZONA, AND THE PUBLICATION THEREOF, AND TO EXTEND THE TERM OF OFFICE OF THE PRESENT CODE COMMISSIONER, AND TO DEFINE HIS POWERS AND DUTIES, AND MAKING AN APPROPRIATION FOR HIS COMPENSATION AND THE COMPENSATION OF STENOGRAPHERS TO BE EMPLOYED BY HIM.

Be It Enacted by the Legislature of the State of Arizona:

Sec. 1. The term of office of the present code commissioner is hereby extended until the comple-

tion of the compilation, indexing and arrangement of the laws of this state as hereinafter provided.

Sec. 2. It shall be the duty of the said code commissioner to compile, arrange under proper heading and subjects and chapters all laws of a general nature which shall be in force after the adjournment of the third special session of the first legislature of the state of Arizona, or to take effect thereafter, and not repealed or adjudged unconstitutional by the supreme court of Arizona, with authority to arrange said laws into titles and chapters, to re-number the several sections contained therein into paragraphs as such compilation and arrangement may require and to re-number titles and chapters, and to provide such head notes to titles and chapters as may be necessary to prepare such laws for publication.

3. The said code commissioner shall also prepare such marginal notes as he may deem proper, to be printed and published upon the margin of the pages of the bound volumes of the statutes.

Sec. 4. The said code commissioner shall also prepare for publication with the said statutes, in the first part of the first volume as hereinafter provided, a copy of the Declaration of Independence, the Articles of Confederation of 1777, the Constitution of the United States, the Constitution of the State of Arizona, and amendments thereto, Election Ordinance No. 2, the Act of Congress, known as the Enabling Act, or so much thereof as relates to the then territory of Arizona, and the act admitting [182] Arizona to statehood, together with final proclamation of the President, the treaties between the United

States and Mexico, known as the Treaty of Guadalupe Hidalgo, and the Gadsden Treaty, and the acts of Congress relating to the naturalization of aliens, and the authentication of laws and records, together with an index with each of the foregoing.

Sec. 5. The said code commissioner shall also prepare a full and complete index to the laws contained in each of the volumes hereinafter provided.

Sec. 6. Said code commissioner shall also prepare suitable annotations, which annotations shall show by proper and appropriate references all decisions of the Supreme Court of Arizona, commenting upon, or in any way referring to any section of the Laws or Constitution of the State of Arizona up to the first day of July, 1913, and all decisions of the Supreme Court of the United States construing or commenting upon any laws of the Territory or State of Arizona; such annotations shall state only the title of the case and the names of the parties, the number of the volumes and the name and page of the report containing such decisions.

Sec. 7. Nothing in this act shall be construed as giving said code commissioner any power to change or modify or make any law or laws, but only as giving him full power and authority to complete a full compilation and arrangement for publication of the laws of this state.

Sec. 8. The said code commissioner shall receive the sum of One Thousand Dollars for expenses upon the passage and approval of this Act; and compensation at the rate of Four Hundred and Fifty

Dollars a month until the said services are completed.

Sec. 9. The said code commissioner is authorized and empowered to employ one or more stenographers to assist in the preparation of said index and the performance of the services herein provided, who shall be paid as compensation not to exceed one hundred fifty dollars per month each.

10. Upon the presentation of verified claims, certified by the said code commissioner as being correct, the state auditor shall draw his warrants upon the state treasurer, payable out of [183] the general fund, for the compensation of the code commissioner and for said stenographer or stenographers, and the state treasurer is hereby authorized and directed to pay the same.

Sec. 11. Upon the completion of the compilation, arrangement and indexing of the said laws and other matters hereinbefore provided, the same shall be published by the secretary of state. All laws of a general nature so compiled, arranged and indexed by the said code commissioner shall be published in two volumes to be known respectively as the Revised Statutes of Arizona, 1913, Civil Code, and the Revised Statutes of Arizona, 1913, Penal Code. All laws of a civil nature shall be published in the first mentioned volume, and all laws contained in the penal code and other penal statutes shall be published in the second volume above mentioned.

Sec. 12. The said laws shall be printed and published in volumes bound in sheep or buckram,

and of the same size of page and type as the volume known as the Revised Statutes of Arizona, 1901.

Sec. 13. When the manuscript of the said laws and other matters hereinbefore mentioned, and the indexes have been prepared for publication, the secretary of state shall call for competitive bids for printing and binding same, and he shall award the printing thereof to the lowest, best, and most responsible bidders; provided, however, that the secretary of state shall have power to reject any and all bids and again call for competitive bids for such publication and binding; provided, further, that the secretary of state is hereby given discretion to call for bids for said printing separately from said binding, and he may award separate contracts for each.

Sec. 14. For the purpose of defraying the cost of printing and publishing said volumes the secretary of state is hereby authorized to draw upon the general fund in favor of any contractor as herein provided; the state auditor is hereby authorized and directed to draw his warrant, specifying thereon the purpose for which it is drawn in payment for such publication; and the state treasurer shall pay the same from any funds in the general fund not otherwise appropriated.

Sec. 15. All laws of a special and temporary nature and effect, including all appropriation acts, and all local and special laws, [184] shall not be included in the volumes to be known as the Revised Statutes of Arizona, 1913, but shall be published by the said secretary of state in a separate volume, and the secretary of state shall in like manner call

for bids and cause to be published such laws in a separate volume.

Sec. 16., Immediately after publication the secretary of state shall send, at the expense of the state, bound volumes of all such published volumes as follows: To the governor, Judges of the Supreme Court, the Attorney General, State Engineer, Secretary of State, State Auditor, State Treasurer, Superintendent of Public Instruction, Clerk of the Supreme Court, Reporter of decisions of the Supreme Court, Code Commissioner, the stenographer of the Code Commissioner, the Corporation Commission, the Tax Commission, the Land Commission, and the Fair Commission, each one copy; to the Superior Court of each county, the clerk of the superior court of each county, one copy, the county attorney of each county, two copies; the board of supervisors, the treasurer, the sheriff, the assessor, the recorder, the county school superintendent, and to each justice of the peace, for the use of his office and to be transmitted to his successor in office, each one copy; to each state senator and representative and to the secretary and the assistant secretary of the senate, and the chief clerk and the assistant chief clerk of the house of the legislature which enacted said acts, one copy each; to the Library of Congress, two copies; to the State Library, ten copies; to the State University and State Normal Schools, one copy each; to each state and territory which practices like comity with this state, one copy; and to effect exchanges with foreign governments, twenty-five copies; to the United States District Judge

and to the United States District Attorney for this district, and to his assistants, one copy each; to the Judges of the United States Circuit Court of Appeals for this Circuit, one copy each; and to each public library in the state of Arizona applying therefor, one copy. The clerk of the board of supervisors of each county shall, within one month after the adjournment of the legislature, forward to the secretary of state a statement containing the names and addresses of all officers in his county entitled by law to receive a [185] copy of the acts of the legislature.

Sec. 17. The said volumes containing the laws of a special, local, or temporary character shall be distributed as follows: One copy to each of the members of the senate and house of representatives by whom the same was passed; to the Governor, the Attorney General, the Secretary of State, the State Auditor, the Corporation Commission, the Tax Commission, the State Engineer, the State Treasurer, the Superintendent of Public Instruction, each one copy; to the judges of the supreme court and clerk of said court, each one copy; to the judges of the superior court, each one copy; to the superintendents of the asylum for the insane, state prison, industrial school, and to the chairman of the state fair commission, each one copy, and to other state or county officers applying therefor, each one copy.

Sec. 18. The secretary of state shall indelibly mark each book delivered to officers in this state (except members of the legislature) with the name

of the county to which, and the official designation of the officer to whom it is sent. Such books shall remain the property of the state and shall be, by the officers receiving them, delivered to their successors.

Sec. 19. There is hereby appropriated out of the general fund, for the purpose of paying the compensation of the said code commissioner for the services herein provided, and for the compensation of said stenographer or stenographers, as he may employ, the sum of six thousand dollars.

Sec. 20. There is hereby further appropriated out of the general fund of this state a sum of money sufficient to pay the cost of publication of said laws, as hereinbefore provided, and furnishing the necessary paper and supplies as herein provided.

Sec. 21. The number of volumes to be published shall be as follows: of the Revised Statutes of Arizona, 1913, the Civil Code, three thousand volumes; of the Revised Statutes, 1913, the Penal Code, three thousand volumes; and of the other laws of the state, five hundred volumes. The volumes, when published, shall be delivered to the secretary of state and by him shall be placed on sale. The Secretary of State shall fix the price at which such volumes shall be [186] sold. Such price shall be so fixed that the amounts to be received from the estimated number of volumes to be sold will reimburse the State for the cost of printing and binding all such volumes. All moneys received by the secretary of state for the sale of the volumes shall be paid to the state treasurer for the general fund of the state.

Sec. 22. The secretary of state shall furnish the said code commissioner with all paper and other necessary supplies for the performance of the services herein required. The cost thereof shall be certified by the secretary of state to the state auditor who shall from time to time draw his warrant on the general fund in favor of the secretary of state for the cost of such paper and supplies, and the state treasurer shall pay the same as other warrants are paid.

Sec. 23. The secretary of state shall cause the volumes labeled "Revised Statutes of Arizona, 1913, Civil Code," and the "Revised Statutes of Arizona, 1913, Penal Code", to be copyrighted for the use and benefit of the state. The copyright shall be taken out by the secretary of state in the name of the State of Arizona; provided, however, that the secretary of state may, upon written application permit any person to publish in pamphlet or book form any part of said statutes relating to not more than one subject.

Whereas, at the present session of the first legislature of the State of Arizona, the statutes have been codified and revised and it is necessary that prompt publication be made thereof in suitable forms for distribution, and for that reason the public peace and safety require that this act shall take immediate effect, it is hereby declared an emergency exists, and this act shall take effect and be in full force and effect from and after its passage and its approval by the governor, and is hereby

exempt from the operation of the referendum provisions of the State Constitution.

May 13, 1913.

Read third time in full and passed the House as amended by following vote: 27 ayes, —nays, 5 absent, 3 excused.

(signed) H. H. LINNEY

Speaker of the House

Approved May 16th, 1913

(signed) GEO. W. HUNT

[Seal]

Governor of Arizona

Passed the Senate May 12, 1913, by a vote of 17 ayes, 1 noes, -- absent, 1 excused.

(signed) M. G. CUNNIFF

President of the Senate

House amendments concurred in by the Senate May 14, by the following votes: 16 ayes, -- noes, 1 absent, 2 excused.

(signed) M. G. CUNNIFF

President of the Senate [187]

[Endorsed]: Filed May 17, 1943. [188]

Plaintiffs' Exhibit No. 1

In the Supreme Court of the State of Arizona
No. -----

MARICOPA COUNTY, a body politic and corporate,

Plaintiff,

vs.

SIDNEY P. OSBORN, Governor of the State of Arizona; ANA FROHMILLER, State Auditor of the State of Arizona; and J. D. BRUSH, State Treasurer of the State of Arizona, constituting
THE LOAN COMMISSIONERS OF THE
STATE OF ARIZONA,

Defendants.

PETITION FOR WRIT OF MANDAMUS

To the Honorable, the Supreme Court of the State of Arizona:

The petition of Maricopa County, a body politic and corporate, respectfully shows: [190]

I.

That plaintiff is a body politic and corporate, created and existing under the Constitution and laws of the State of Arizona.

II.

That Sidney P. Osborn, as Governor of the State of Arizona, Ana Frohmiller, as State Auditor of the State of Arizona, and J. D. Brush, as State Treasurer of the State of Arizona, are constituted, and they now are, under and by virtue of their

offices and the laws of the State of Arizona, the Loan Commissioners of the State of Arizona, whose duties are prescribed by Chapter 10, Arizona Code Annotated, 1939, and particularly by Article 4 thereof. That under and by virtue of the provisions of said Article 4 of Chapter 10, Arizona Code Annotated, 1939, it is the duty of said Loan Commissioners upon a compliance with the conditions of said Article 4, to authorize and provide for the paying, redeeming and refunding of all, or any part of, the outstanding principal and interest of the bonded indebtedness of the counties of the State of Arizona, including such indebtedness of plaintiff herein, and to issue negotiable coupon bonds of the State of Arizona for the purpose of refunding such outstanding indebtedness. That prior to the year 1919 and at all times since that date there existed in [191] the State of Arizona a commission known as the Loan Commissioners of the State of Arizona; that said Loan Commissioners constitute an official body of the State of Arizona and that defendants, and each of them, are the present incumbents, holding the office and constituting the body known as the Loan Commissioners of the State of Arizona. That at all of the times herein mentioned the law of the State of Arizona creating said Loan Commissioners of the State of Arizona, and prescribing their duties, was in full force and effect in the State of Arizona.

III.

That Plaintiff, Maricopa County, heretofore, to-wit under date of June 15, 1919, pursuant to the

laws of the State of Arizona, duly authorized and issued \$4,000,000 principal amount of Highway Bonds, bearing interest at the rate of $5\frac{1}{2}\%$ per annum, payable semi-annually, maturing over a period of 20 years beginning June 15, 1930, of which issue there were on or about July 7, 1941, outstanding and unpaid bonds in the principal amount of \$2,100,000, whereof there are now outstanding and unpaid as of the date hereof \$1,700,000 principal amount of said bonds, being bonds numbered 2301 to 4000, both inclusive, which mature and become payable in serial amounts on June 15th in each of the years 1944 to 1949, both inclusive. That [192] of said issue there is also outstanding and unpaid \$200,000 principal amount of bonds maturing June 15, 1943, for the payment of which plaintiff now has funds in its treasury and which are not, therefore, affected by the present proceedings.

That plaintiff, Maricopa County, heretofore, to-wit under date of January 15, 1921, pursuant to the laws of the State of Arizona, duly authorized and issued \$4,500,000 principal amount of Highway Bonds, bearing interest at the rate of 6% per annum, payable semi-annually, maturing over a period of 20 years beginning January 15, 1931, of which issue there were on or about July 7, 1941, outstanding and unpaid bonds in the principal amount of \$2,800,000, whereof there are now outstanding and unpaid as of the date hereof \$2,400,000 principal amount of said bonds, being bonds numbered 6101 to 8500, both inclusive, which mature and become

payable in serial amounts on January 15th in each of the years 1944 to 1951, both inclusive.

IV.

That on July 7, 1941, the Board of Supervisors of Maricopa County passed and adopted a resolution officially demanding that the defendants herein, as the Loan Commissioners of the State of Arizona, redeem and refund said issued and outstanding Highway [193] Bonds of Maricopa County in the aggregate principal amount of \$4,900,000, which aggregate principal amount was outstanding as of said July 7, 1941, and by such resolution the Board of Supervisors of Maricopa County found and recited that the redeeming and refunding of such outstanding indebtedness would be for the profit and benefit of Maricopa County.

V.

That on November 7, 1941, said Loan Commissioners informed the Board of Supervisors of Maricopa County, in writing, that they were unauthorized to refund said outstanding indebtedness of Maricopa County as demanded by Maricopa County, as aforesaid, and said Loan Commissioners did thereupon refuse to redeem and refund said outstanding Highway Bonds of Maricopa County or to provide for the refunding thereof, and thereupon, to-wit, on February 2, 1942, Maricopa County filed an original action in mandamus in this Court entitled: "Maricopa County, a Municipal Corporation, Plaintiff, vs. Sidney P. Osborn, Governor of the State of

Arizona, Ana Frohmiller, State Auditor, and Joe Hunt, State Treasurer, constituting the Loan Commissioners of the State of Arizona, defendants, No. 4489," to command said Loan Commissioners to redeem and refund said outstanding indebtedness of Maricopa [194] County notwithstanding the refusal of said Loan Commissioners so to do.

VI.

That said original action filed in this Court, as aforesaid, duly came on for hearing and decision, and on May 4, 1942, this Court rendered and entered its judgment making peremptory the alternative writ of mandamus which had theretofore issued in said action, and by said peremptory writ of mandamus said Loan Commissioners were commanded to redeem said outstanding indebtedness of Maricopa County.

VII.

That pursuant to said peremptory writ of mandamus which issued from this Court in said action, as aforesaid, said Loan Commissioners, on November 19, 1942, in a meeting regularly and duly called and convened, passed and adopted a resolution authorizing the issuance of refunding bonds of the State of Arizona for the purpose of redeeming said Maricopa County Highway Bonds then outstanding, as hereinabove alleged in paragraph III hereof, in said aggregate principal amount of \$4,100,000, and by such resolution called for bids for the purchase of said refunding bonds. Said resolution passed and adopted by the Loan Commis-

sioners of the State of Arizona on November 19, 1942, as [195] aforesaid, is in words and figures as follows, to-wit:

“RESOLUTION OF THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA AUTHORIZING THE ISSUANCE AND SALE OF REFUNDING BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF \$4,100,000, IN THE DENOMINATION OF \$1,000 EACH, TO BEAR INTEREST AT A RATE NOT TO EXCEED THREE (3%) PER CENTUM PER ANNUM, SAID REFUNDING BONDS TO CONSIST OF 4,100 BONDS NUMBERED CONSECUTIVELY FROM 1 TO 4,100, BOTH INCLUSIVE, PAYABLE AT THE RATE OF \$300,000 ON THE 15TH DAY OF JULY IN EACH OF THE YEARS 1944 TO 1956, BOTH INCLUSIVE, AND AT THE RATE OF \$200,000 ON THE 15TH DAY OF JULY IN THE YEAR 1957, AND PROVIDING FOR THE GIVING OF NOTICE OF THE SALE OF SAID REFUNDING BONDS, AND PROVIDING FOR THE LEVY OF TAXES UPON ALL THE PROPERTY WITHIN MARICOPA COUNTY, STATE OF ARIZONA, SUFFICIENT TO PAY THE PRINCIPAL AND INTEREST OF SAID BONDS AT THE DATES OF THEIR MATURITY.

Whereas, Maricopa County, State of Arizona, has outstanding Highways Bonds, [196] dated June 15,

1919, in the aggregate principal amount of \$1,700,000, and also outstanding Highway Bonds, dated January 15, 1921, in the aggregate principal amount of \$2,400,000, bearing interest and maturing as follows:

MARICOPA COUNTY HIGHWAY BONDS

Dated June 15, 1919

Numbers (All Inclusive)	Maturity Dates	Amount
2301-2500	June 15, 1944	\$ 200,000
2501-2800	June 15, 1945	300,000
2801-3100	June 15, 1946	300,000
3101-3400	June 15, 1947	300,000
3401-3700	June 15, 1948	300,000
3701-4000	June 15, 1949	300,000
Total		\$1,700,000

Interest rate: Five and one-half (5½%) per centum per annum, payable semi-annually on June 15th and December 15th in each year of their issue until maturity.

MARICOPA COUNTY HIGHWAY BONDS

Dated January 15, 1921

Numbers (All Inclusive)	Maturity Dates	Amount
6101-6300	January 15, 1944	\$ 200,000
6301-6501	January 15, 1945	201,000
6502-6801	January 15, 1946	300,000
6802-7101	January 15, 1947	300,000
7102-7401	January 15, 1948	300,000
7402-7700	January 15, 1949	299,000

Numbers		
(All Inclusive)	Maturity Dates	Amount
7701-8000	January 15, 1950	300,000
8001-8500	January 15, 1951	300,000
Total		<hr/> \$2,400,000
[197]		

Interest rate: Six (6%) per centum per annum, payable semi-annually on January 15th and July 15th in each year of their issue until maturity.
and

Whereas, a benefit and profit will inure to Maricopa County by the saving in interest which will be effected by Maricopa County in the event the bonds described aforesaid are refunded and sold by the Loan Commissioners of the State of Arizona for and on behalf of said county; and

Whereas, under the provision of Section 10-409 of the Arizona Code Annotated, 1939, the Board of Supervisors of Maricopa County have demanded that the Loan Commissioners of the State of Arizona provide for the refunding of such bonds by the issuance and sale of refunding bonds in the aggregate principal amount of \$4,100,000, to be used solely for the purpose of paying and redeeming the aforesaid bonds of Maricopa County;

Now, Therefore, Be It Resolved by the Loan Commissioners of the State of Arizona, as follows:

Section 1. That for the purpose of refunding Highway Bonds of Maricopa County, State of Arizona, in the aggregate principal amount of \$4,100,000, refunding bonds of the State of Arizona are

hereby authorized to be issued and sold in the aggregate principal amount of \$4,100,000.

Section 2. That said bonds shall bear the date of their issue, shall bear interest at the [198] rate of not to exceed three (3%) per cent per annum, payable semi-annually on the 15th day of January and on the 15th day of July in each year from the date thereof until maturity, shall be payable at the rate of \$300,000 on the 15th day of July in each of the years 1944 to 1956, both inclusive, and at the rate of \$200,000 on the 15th day of July, 1957, shall be numbered from 1 to 4100, both inclusive, and shall be in the denomination of One Thousand (\$1,000) Dollars each. Said bonds shall be negotiable bonds, in coupon form, and shall contain such terms, covenants, and conditions as are provided for in such bonds and in the coupons attached thereto, and shall be payable at the office of the State Treasurer of the State of Arizona, in the Capitol building, at the City of Phoenix, Maricopa County, State of Arizona.

Section 3. That said bonds shall be signed by the Loan Commissioners of the State of Arizona, shall have the seal of the State of Arizona affixed thereto, shall be countersigned by the Treasurer of the State of Arizona, and bear his official seal, shall be registered by the Auditor of the State of Arizona in a book kept for that purpose which shall show the amount said bonds and each of them are sold for. The interest coupons attached to said bonds shall bear the facsimile signature of the State Treasurer of the State of Arizona which he

shall by the signing of said bonds adopt as and for his own signature.

Section 4. That the bonds hereby authorized shall be issued upon the faith and credit [199] of the State of Arizona only in the manner and to the extent authorized and provided in Article 4 of Chapter 10 of the Arizona Code Annotated, 1939. No recitals contained in this resolution, or in the bonds hereby authorized to be issued and sold, shall be construed to impose any further or greater obligations upon the State of Arizona than as authorized by Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, or any other provision of the Constitution and laws of the State of Arizona thereunto enabling.

Section 5. That the form of said bonds and coupons shall be substantially in the following form:

UNITED STATES OF AMERICA
STATE OF ARIZONA
REFUNDING BOND

No.....

\$1,000

The State of Arizona, for value received, hereby promises to pay to the bearer of this bond the principal sum of One Thousand (\$1,000) Dollars, on the 15th day of July, 19....., together with interest at the rate of (.....%) per centum per annum, payable semi-annually on the 15th day of January and on the 15th day of July of each year from the date of and until the maturity of this bond upon the presentation and surrender of the

attached coupons as they severally become due. Both principal and the interest on this bond are payable at the office of the Treasurer of the State of Arizona in the capitol building, at the City of Phoenix, Maricopa County, Arizona, in lawful money of the United States of America. [200]

This bond is one of a series of Four Thousand One Hundred (4,100) refunding bonds authorized and issued by the State of Arizona pursuant to a demand made by the Board of Supervisors of Maricopa County, State of Arizona, upon the Loan Commissioners of the State of Arizona under the provisions of Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, and all other laws of the State of Arizona thereto enabling, for the refunding of a like amount of valid outstanding bonded indebtedness of said Maricopa County, and is payable only from the moneys required to be paid to the State Treasurer of the State of Arizona by said Maricopa County under the provisions of Article 4 of Chapter 10 of the Arizona Code Annotated, 1939.

It is hereby certified that the bonds of which this is one are issued in full conformity with the Constitution and laws of the State of Arizona, and particularly Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, and that all conditions, acts and things required by the Constitution and laws of the State of Arizona to exist, occur, and to be performed precedent to and in the issuance of this bond exist, have occurred and have been performed, and that under the provisions of Article 4 of Chap-

ter 10 of the Arizona Code Annotated, 1939, the State Board of Equalization of the State of Arizona, or on its failure, the State Auditor of the State of Arizona, shall determine the rate of tax to be levied annually on all the taxable property within said county to pay the principal and interest of this bond as they respectively become due and payable and shall certify the [201] same to the board of Supervisors of said county and said Board of Supervisors shall enter such rate upon the assessment rolls of said county as other taxes and that if said county becomes delinquent in the payment of such taxes, said Board of Supervisors shall, before the next levy of taxes, prorate such delinquencies and make such additional levy, in addition to the current annual rate as may be certified to said Board of Supervisors by said State Board of Equalization, or said State Auditor, as may be necessary to pay the principal and interest of this bond and other bonds of this issue at their maturities and that said State Board of Equalization may reconvene said Board of Supervisors for the purpose of entering such rate or additional rate or levy or additional levy as said State Board of Equalization, or said State Auditor, may certify, as aforesaid, and that said county, or the treasurer thereof, is required by law to pay to the State Treasurer of the State of Arizona, on or before the first day of June of each year, the total amount so certified, as aforesaid, whether or not the whole amount has been collected from the levy of taxes therefor.

For the punctual payment of this bond and the interest hereon, the faith and credit of the State of Arizona are hereby irrevocably pledged only to the extent that it will cause to be levied and collected taxes, as aforesaid, for the payment of the principal and interest of this bond and will pay such principal and interest out of the moneys derived from the collection of such taxes and paid to the State Treasurer of the State of Arizona. [202]

In Witness Whereof, the State of Arizona, acting by and through the Loan Commissioners of the State of Arizona, has caused this bond to be signed by the Loan Commissioners of the State of Arizona, countersigned by the State Treasurer of the State of Arizona, and have affixed hereto the Great Seal of the State of Arizona, and the seal of the State Treasurer of the State of Arizona, and has caused the coupons attached to this bond to bear the facsimile signature of the State Treasurer of the State of Arizona, all as of this.....day of, 194....

Governor.

State Auditor.

State Treasurer.

Loan Commissioners of the
State of Arizona.

Countersigned:

State Treasurer. [203]

COUPON

No.

\$.....

On the day of, 19....., the State of Arizona will pay to the bearer, from moneys provided to be paid to the Treasurer of the State of Arizona for that purpose, the sum of (\$.....) Dollars, in lawful money of the United States of America, at the office of the Treasurer of the State of Arizona, at the City of Phoenix, Arizona, being the interest then due on its Refunding Bond dated.....
, 19....., and bearing No.

(FACSIMILE)

 State Treasurer.

(Certificate to be endorsed on the
 reverse side of each bond)

State of

Arizona—ss.

I, the undersigned, State Auditor of the State of Arizona, do hereby certify that the within bond has been registered by me in the book kept for that purpose in the manner provided by law.

In Witness Whereof, I have hereunto set my hand and affixed the official seal of my office this
 day of, 19.....

 State Auditor. [204]

Section 6. That the State Treasurer of the State of Arizona shall cause to be published in Chandler

Arizonian, a newspaper published and circulated in the County of Maricopa, State of Arizona, and in Nogales International, a newspaper published and circulated in the County of Santa Cruz, State of Arizona, and in Casa Grande Dispatch, a newspaper published and circulated in the County of Pinal, State of Arizona, a copy of the "Call for Bids" hereinafter set forth, for the purpose of inviting and receiving bids for the purchase of said refunding bonds. The call for bids shall be published in said newspapers once a week for one month before the date of the sale of said bonds and it shall be substantially as follows:

CALL FOR BIDS

Notice Is Hereby Given that sealed proposals for the purchase of refunding bonds to be issued by the Loan Commissioners of the State of Arizona on behalf of Maricopa County, State of Arizona, under the provisions of Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, will be received by the Loan Commissioners of the State of Arizona at the office of the State Treasurer of the State of Arizona, in the capitol building, at the City of Phoenix, Arizona, at not later than the hour of 5 o'clock, P. M., Monday, the 1st day of February, 1943.

The aggregate principal amount of said refunding bonds is \$4,100,000, of the denomination of \$1,000 each, bearing the date of their issuance, bearing interest at the rate of not [205] to exceed three (3%) per centum per annum, interest pay-

able semi-annually on the 15th day of January and on the 15th day of July of each year from the date of the bonds until their maturity, are numbered from 1 to 4,100, both inclusive, and shall be payable at the rate of \$300,000 on the 15th day of July of each of the years 1944 to 1956, both inclusive, and at the rate of \$200,000 on the 15th day of July in the year 1957.

At the time and place above indicated, or at a later time, the Loan Commissioners of the State of Arizona will convene at their usual place of meeting within said capitol building for the purpose of considering all bids received for the purchase of said bonds and to take such action thereon as may be deemed advisable.

All bids must state the rate of interest to be paid. No bid for the purchase of said bonds at a price of less than the par value thereof will be considered and all bids must be accompanied by a certified or cashier's check drawn on a member bank of the Federal Reserve System in an amount equal to five (5%) per cent of the total par value of said bonds, said check to be drawn payable to the order of the State Treasurer of the State of Arizona. The certified or cashier's check of the successful bidder shall be retained by the Loan Commissioners of the State of Arizona to be applied upon the purchase price of said bonds and shall be forfeited in the event such bidder does not take up and pay for said bonds immediately upon their issuance and delivery to such bidder. [206] The Loan Commissioners of the State of Arizona

reserve the right to reject any and all bids received. Delivery of the bonds shall be made at the office of the State Treasurer of the State of Arizona, in the Capitol Building at the City of Phoenix, Arizona.

State Treasurer of the State
of Arizona.

Section 7. The State Board of Equalization of the State of Arizona, or on its failure, the State Auditor of the State of Arizona, shall determine the rate of tax to be levied annually on all the taxable property within said Maricopa County to pay the principal and interest of such refunding bonds as they respectively become due and payable, and shall certify the same to the Board of Supervisors of said county, and said Board of Supervisors shall enter such rate upon the assessment rolls of said county as other taxes, and if said county becomes delinquent in the payment of such taxes, said Board of Supervisors shall, before the next levy of taxes, prorate such delinquencies and make such additional levy, in addition to the current annual rate as may be certified to said Board of Supervisors by said State Board of Equalization, or said State Auditor, as may be necessary to pay the principal and interest of said bonds at their maturities, and said State Board of Equalization, in the event said Board of Supervisors fails to make such levy of taxes, shall reconvene said Board of Supervisors for the purpose of compelling said [207] Board of Supervisors to enter such rate or additional rate or

levy or additional levy as said State Board of Equalization, or said State Auditor may certify, as aforesaid, and said county, or the Treasurer thereof, shall, on or before the first day of June of each year, pay to the State Treasurer of the State of Arizona the total amount so certified to said Board of Supervisors as may be required to pay the principal and interest on such bonds, as aforesaid, whether or not the whole amount has been collected from the levy of taxes therefor.

Section 8. That the proceeds from the sale of said refunding bonds shall be used solely for the purpose of paying and redeeming the issues of the Highway Bonds of Maricopa County, State of Arizona, described as aforesaid.

Passed and Adopted by the Loan Commissioners of the State of Arizona on this 19th day of November, 1942.

SIDNEY P. OSBORN,
Governor.

ANA FROHMILLER,
State Auditor.

JOE HUNT,
State Treasurer.

Loan Commissioners
of the State of Arizona." [208]

VIII.

That pursuant to said resolution adopted by said Loan Commissioners on November 19, 1942, as aforesaid, the call for bids as authorized and in

the form set forth in said resolution was published once a month for one (1) month in three weekly newspapers published and circulated in three separate counties of the State of Arizona (one of which was published in Maricopa County and no two of which were published in the same county) such publication being for not less than five consecutive times in each of said newspapers, inviting bids for the purchase of said refunding bonds of the State of Arizona to be filed with said Loan Commissioners not later than 5:00 p. m. on Monday, the 1st day of February, 1943. That in addition, said notice of sale of said bonds was also published in "The Bond Buyer," a publication in the City and State of New York and of circulation throughout the United States of America among bond houses, investment bankers and dealers in state and municipal securities.

IX.

That pursuant to said call for bids, Bank of America National Trust and Savings Association, Boettcher and Company, and R. H. Moulton & Company submitted their joint bid in writing for the purchase of said re- [209] funding bonds and accompanied said bid with a cashier's check in the sum of \$205,000, drawn on the First National Bank of Arizona, a member of the Federal Reserve System, payable to the Treasurer of the State of Arizona; that said bid was the only bid submitted and filed with the Loan Commissioners for the purchase of said state refunding bonds. That a true copy

of said bid is set forth in the Resolution of the Loan Commissioners adopted February 10, 1943, which is set forth at length in paragraph X. hereof and is hereby referred to and incorporated herein for further particulars thereof.

X.

That on said date fixed for the receipt of said bids, said Loan Commissioners regularly and duly convened for the purpose of considering all bids and did consider said bid of Bank of America National Trust and Savings Association, Boettcher and Company and R. H. Moulton and Company for the purchase of said refunding bonds and took the same under advisement. That thereafter, to-wit, on February 10, 1943, the Board of Supervisors of Maricopa County, being advised of said bid for the purchase of said State of Arizona Refunding Bonds, duly passed and adopted a resolution requesting said Loan Commissioners to accept said bid and filed with said Loan Commissioners a copy of said [210] resolution, duly certified. Said resolution of the Board of Supervisors of Maricopa County requesting that said State of Arizona Refunding Bonds be sold and awarded in accordance with said bid is in words and figures as follows, to-wit:

“RESOLUTION OF THE BOARD OF SUPERVISORS OF MARICOPA COUNTY, ARIZONA, REQUESTING THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA TO SELL \$4,100,000 STATE OF ARI-

ZONA REFUNDING BONDS TO BE ISSUED FOR THE PURPOSE OF REDEEMING A LIKE PRINCIPAL AMOUNT OF BONDS OF MARICOPA COUNTY

Be It Resolved by the Board of Supervisors of Maricopa County, Arizona, as follows:

1. The Loan Commissioners of the State of Arizona are hereby requested by the Board of Supervisors of Maricopa County to accept the bid of Bank of America, N.T.&S.A., Boettcher and Company and R. H. Moulton and Company for \$4,-100,000 principal amount of State of Arizona Refunding Bonds to be issued for the purpose of redeeming a like principal amount of bonds of Maricopa County, and to make said award of said bonds to said bidders so that said bonds may be delivered March 15, 1943, or at any time subsequent thereto if it proves to be impracticable to effect such delivery by March 15, 1943. The [211] Board of Supervisors of Maricopa County hereby declares that said bidders is satisfactory to the Board of Supervisors of Maricopa County and that the sale of said refunding bonds will inure to the profit and benefit of Maricopa County.

2. That this request and recommendation is made to the Loan Commissioners of the State of Arizona for the reason that said bidders requested that said refunding bonds be delivered to them not later than March 15, 1943, upon the understanding that said bonds could be printed, executed and delivered within that time. That since the submission of said

bid it appears that due to causes beyond the control of either party, including the possibility of litigation, delivery of said refunding bonds may be delayed beyond said March 15, 1943, and said Loan Commissioners are accordingly requested to agree with said bidders that said refunding bonds shall be delivered as soon as practicable, and it is the desire of the Board of Supervisors that said bonds be sold in accordance with said bid and upon such reasonable conditions as may be required by the Loan Commissioners of the State of Arizona with respect to the maximum time of delivery of said bonds and the conditions upon which the bidders may be relieved of their obligations if, notwithstanding such sale, said bonds are not available for delivery in accordance with the terms of said bid until after March 15, 1943.

3. The Clerk of said Board of Supervisors is hereby authorized to certify this resolution [212] and to deliver to the Loan Commissioners of the State of Arizona a certified copy thereof.

Passed and Adopted by the Board of Supervisors of Maricopa County, Arizona, this 10th day of February, 1943.

BOARD OF SUPERVISORS
OF MARICOPA COUNTY,
ARIZONA

By JOHN A. FOOTE,
Chairman.

Attest:

J. E. De SOUZA, Clerk.

That thereafter, to wit, on February 10, 1943, said Loan Commissioners, at a meeting duly and regularly convened for that purpose on said date, accepted said bid and awarded the purchase of said refunding bonds to said bidders by resolution passed and adopted on said date by said Loan Commissioners and in and by said resolution duly provided for the call and redemption of said outstanding bonds of Maricopa County and directed the state treasurer of the State of Arizona to publish notice of redemption in the form and for the periods prescribed in said resolution and in the manner therein set forth, and in and by said notice of redemption directed the holder of said outstanding bonds of Maricopa County to surrender the same for payment and cancellation, and further provided that inter- [213] est on such outstanding bonds should cease from and after 30 days from the first publication of said notice of redemption; that said resolution in all respects directs the delivery of said refunding bonds to the successful bidder therefor, upon payment of the purchase price, and provides for the application of said purchase moneys when received by the state treasurer to the redemption of said outstanding bonds. Said resolution so adopted on said date by said Loan Commissioners is in words and figures as follows, to wit:

“RESOLUTION OF THE LOAN COMMISSIONERS OF THE STATE OF ARIZONA SELLING \$4,100,000 PRINCIPAL AMOUNT OF REFUNDING BONDS TO BE ISSUED

FOR THE PURPOSE OF REDEEMING A LIKE PRINCIPAL AMOUNT OF BONDS OF MARICOPA COUNTY, ARIZONA; PROVIDING FOR THE REDEMPTION OF OUTSTANDING BONDS OF MARICOPA COUNTY, AGGREGATING THE PRINCIPAL AMOUNT OF \$4,100,000; SETTING ASIDE THE PROCEEDS OF THE SALE OF STATE OF ARIZONA REFUNDING BONDS FOR THE PURPOSE OF REDEEMING SAID BONDS OF MARICOPA COUNTY AND DIRECTING NOTICE OF SUCH REDEMPTION TO BE GIVEN [214]

Whereas, the Loan Commissioners of the State of Arizona, heretofore, to-wit, on November 19, 1942, authorized the issuance of \$4,100,000 principal amount of State of Arizona Refunding Bonds and directed notice of sale thereof to be given; and

Whereas, such notice of the sale of said Refunding Bonds has been duly given and published and at the time and place fixed for the receipt of bids, the Loan Commissioners duly met to consider all bids received for the purchase of said bonds and to take such action thereon as might be deemed advisable; and

Whereas, Bank of American National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and Company, duly filed their bid for the purchase of said bonds at the price of par and a premium accompanied by a cashier's check on the First National Bank of Arizona, which is

a member bank of the Federal Reserve System, payable to the Treasurer of the State of Arizona in the sum of \$205,000; and

Whereas, said bid for the purchase of said bonds and the bidders' good faith check accompanying the same are satisfactory and in accordance with law and the Board of Supervisors of Maricopa County has, by resolution determined that said bid is satisfactory and should be accepted; and

Whereas, it appears that said bid should be accepted and said bonds awarded as in this resolution provided; [215]

Now, Therefore, Be It Resolved by the Loan Commissioners of the State of Arizona, as follows:

Section 1. Refunding Bonds of the State of Arizona in the aggregate principal amount of \$4,100,000 are hereby awarded and sold to Bank of America National Trust & Savings Association, Boettcher and Company, and R. H. Moulton and Company in accordance with and subject to the terms and conditions of their said bid as follows, to-wit:

‘February 1, 1943.

‘Loan Commissioners of the

State of Arizona

Phoenix, Arizona

Gentlemen:

For all, but not less than all, of \$4,100,000.00 par value legally issued State of Arizona Refunding Bonds to be dated as of the date of their issuance, to bear interest at the rate of $2\frac{3}{4}$ per cent per an-

num, payable semi-annually January 15 and July 15, of the denomination of \$1,000.00 each, numbered from 1 to 4100, both inclusive, and maturing \$300,000.00 principal amount on July 15 in each of the years 1944 to 1956, both inclusive, and \$200,000.00 on July 15, 1957, all in accordance with your published notice of sale, we bid you the sum of par and accrued interest to date of delivery together with a premium of \$800.00. We further agree as part of the purchase price that we will waive interest on the Refunding [216] Bonds from the date of their issue to April 15, 1943, this concession on our part being made for the purpose of enabling you to complete the proceedings for the call and redemption of the outstanding bonds of Maricopa County to the end that double interest will not accrue on both the Refunding Bonds and the outstanding Maricopa County bonds. This bid is subject to the following conditions, each of which is hereby made a condition precedent to any liability on our part.

(1) That this bid shall be accepted promptly, and notice thereof given to us, in no event later than 5:00 o'clock P. M., Pacific War Time, February 10, 1943.

(2) That said Refunding Bonds shall be duly executed and delivered to us on payment of the purchase price therefor not later than 12:00 o'clock Noon, Pacific War Time, March 15, 1942.

(3) That in the event that prior to the delivery of said Refunding Bonds to us the income received by private holders from bonds of the same type and

character shall be taxable or subjected to tax or be declared to be taxable by the terms of any Federal Income Tax law either by ruling of the Bureau of Internal Revenue or by decision of any Federal Court or by amendment of the Federal Income Tax laws or otherwise, we may at our election be relieved of our obligations under this agreement to purchase said bonds. [217]

(4) The Loan Commissioners of the State of Arizona and the Board of Supervisors of Maricopa County, State of Arizona, will adopt such proceedings and take such action as may legally be required for the purpose of calling and redeeming the outstanding \$4,100,000.00 principal amount of bonds of the County of Maricopa proposed to be refunded from the proceeds of the issuance and sale of said Refunding Bonds of the State of Arizona and that such outstanding bonds of the County of Maricopa to the amount aforesaid will be called and redeemed from the proceeds of the sale of said Refunding Bonds (which shall be used for no other) purpose) and that interest on said bonds of the County of Maricopa will cease from and after the date fixed for such redemption.

(5) That you will furnish us with a full, true and correct transcript of the proceedings for the issuance of said Refunding Bonds duly certified on the basis of which we will be able to secure at our own expense, at or before the delivery of said Refunding Bonds to us, the unqualified legal opinion of Messrs. Orrick, Dahlquist, Neff & Herrington of San Francisco approving the legality of the pro-

ceedings for the issuance of said Refunding Bonds and the proceedings taken or to be taken for the call and redemption of a like principal amount of outstanding bonds of Maricopa County, State of Arizona, in all respects. If our said at- [218] torneys are unable to render their opinion approving the legality of said Refunding Bonds and said proceedings for the redemption of said outstanding bonds of Maricopa County in all respects, this bid is to be deemed cancelled and we are to be relieved from all liability hereunder, with like force and effect as though this bid had not been made.

We hand you herewith cashiers check of the First National Bank of Arizona, which is a member bank of the Federal Reserve System, in the sum of \$205,000.00 payable to the order of the State Treasurer of the State of Arizona, to be held in accordance with your advertised notice of the sale of said bonds, but to be returned to us uncashed in the event you are unable to comply with each and all of the conditions precedent above specified.

Very truly yours,

BANK OF AMERICA NA-
TIONAL TRUST & SAVINGS
ASSOCIATION.

BOETTCHER AND COM-
PANY

R. E. MOULTON AND COM-
PANY

By FRANCES MOULTON.'

Section 2. This award and the sale of said Refunding Bonds is made subject to the following conditions to which said successful bidders have consented and agreed, to-wit:

The Loan Commissioners shall have the right to deliver said Refunding Bonds to said [219] bidders subsequent to March 15, 1943, if it proves to be impracticable to print, lithograph or execute said bonds prior to said date, or to make delivery thereof prior to said date by reason of litigation or any other cause whatsoever, and any delivery of said bonds made subsequent to said date shall constitute good delivery thereof in accordance with said notice of sale, provided all other terms and conditions of said bid shall have been duly complied with.

Said purchasers shall have the right upon five days written notice to the Loan Commissioners to terminate said extended period of delivery and require that delivery of said bonds be made to them not later than five days from the date of said notice. If such delivery of said bonds is not so made to said purchasers by the State Treasurer or the Loan Commissioners within the said period of five days from the date of said notice, this sale shall be deemed cancelled and both the Loan Commissioners and said purchasers shall be relieved of all obligations one to the other. The Loan Commissioners shall be under no liability for damages for failure to deliver said bonds to said purchasers in the event of cancellation of this sale nor shall said purchasers be under any liability to the

Loan Commisioners or the State of Arizona. In the event of such cancellation of this sale the good faith check of \$205,000 deposited by said bidders shall be promptly returned to said bidders.

Section 3. Forthwith upon the payment into the state treasury of the proceeds of the sale of said \$4,100,000 principal amount of [220] State of Arizona Refunding Bonds, the state treasurer shall apportion them to a special fund which is hereby designated the "Maricopa Highway Bond Redemption Fund." Out of the moneys in said Maricopa County Highway Bond Redemption Fund the state treasurer shall pay a like principal amount of \$4,100,000 of bonds of Maricopa County designated and referred to in the resolution of the Loan Commissioners adopted November 19, 1942, which is hereby referred to and by reference incorporated herein and made a part hereof.

Section 4. The Board of Supervisors of Maricopa County and the county treasurer thereof shall cause to be deposited with the state treasurer in a special fund which is hereby designated the "Maricopa County Highway Bond Interest Fund," the amounts necessary to pay interest on the bonds of Maricopa County called for redemption, from the last interest payment date to the date of redemption. The moneys in said Maricopa County Highway Bond Interest Fund shall be used and applied by the state treasurer for the payment of interest from the last ensuing interest payment date to the date of redemption of said Maricopa County bonds.

Section 5. Forthwith upon the deposit of said proceeds of sale of said State of Arizona Refunding Bonds in said Maricopa County Highway Bond Redemption Fund and said interest moneys in said Maricopa County Highway Bond Interest Fund, it is hereby found and determined that there will be in the state treasury of the State of Arizona a sum suf- [221] ficient for the redeeming of said outstanding bonds of Maricopa County, State of Arizona, for the redemption of which said State of Arizona refunding bonds are authorized to be issued.

Section 6. Upon the deposit of the funds as provided in Section 5 hereof, the state treasurer of the State of Arizona is hereby authorized and directed to call for redemption and to redeem all of the outstanding bonds of Maricopa County more particularly described in the Notice of Redemption hereinafter set forth. The state treasurer shall cause notice of such call for redemption to be published at least two (2) consecutive times in the "Arizona Weekly Gazette," a newspaper published in the City of Phoenix, the state capitol of the State of Arizona, and in addition thereto said state treasurer shall cause said notice to be published once a week for one (1) month in three (3) newspapers published in the State of Arizona (no two of which shall be published in the same county), and such notice shall be published in the "Chandler Arizonan," a newspaper published and circulated in the County of Maricopa, State of Arizona, and

in the "Nogales International," a newspaper published and circulated in the County of Santa Cruz, State of Arizona, and in the "Casa Grande Dispatch," a newspaper published and circulated in the County of Pinal, State of Arizona. In addition to such publications in the State of Arizona, which are hereby declared to be sufficient and to constitute adequate public notice of such call for redemption, the state treasurer is hereby au- [222] thorized to cause such Notice of Redemption to be published once in "The Bond Buyer," a publication in the City and State of New York and of general circulation throughout the United States of America among dealers in municipal bonds and institutions and individual investors holding municipal bonds, and, also, to cause such Notice of Redemption to be published once in the "Wall Street Journal, Pacific Coast Edition," a newspaper published in the City and County of San Francisco, State of California, and of general circulation throughout the Pacific Coast of the United States among municipal bond dealers, investors and institutional holders of municipal bonds; but no error or informality in such publication in said newspapers published in New York and San Francisco, respectively, or failure of publication in either or both thereof shall affect the validity of such call for redemption, provided that notice thereof be published in said newspapers in the State of Arizona for the periods above specified. Said state treasurer is further authorized to cause a copy of such advertised Notice of Redemp-

tion to be mailed to Bankers Trust Company of the City of New York, State of New York, and to each bank or trust company or paying agent at which the interest on said bonds of Maricopa County hereby called for redemption was made payable.

Section 7. Said notice of call for redemption shall be substantially in the following form: [223]

NOTICE OF REDEMPTION MARICOPA
COUNTY STATE OF ARIZONA HIGH-
WAY BONDS

Notice Is Hereby Given, that pursuant to law and the proceedings of the Board of Supervisors of Maricopa County and the Loan Commissioners of the State of Arizona, all of the following described bonds of Maricopa County, State of Arizona are hereby called for redemption and will be paid on.....1943, to-wit:

Name of Bond	Date of Issue	Bond Numbers (all inclusive)
Maricopa County		
Highway Bonds	June 15, 1919	2301 to 4000
Maricopa County		
Highway Bonds	Jan. 15, 1921	6101 to 8500

Said bonds will be redeemed at the face amount thereof and accrued interest thereon to and including....., 1943. Said bonds hereby called for redemption must be surrendered on said redemption date (with all interest coupons maturing subsequent to said redemption date) at the office of

the state treasurer of the State of Arizona, Capitol Building, Phoenix, Arizona, for payment and cancellation. If any of said bonds hereinabove numbered and described are not presented for payment and cancellation thirty (30) days after the first publication of this notice, to-wit, on or before....., 1943, interest on all such bonds will cease from and after said date. [224]

This notice is given pursuant to proceedings of the Loan Commissioners of the State of Arizona and the concurrent action of the Board of Supervisors of Maricopa County, State of Arizona, adopting and ratifying the same.

Dated, Phoenix, Arizona,, 1943.

.....

State Treasurer of the State
of Arizona

.....

County Treasurer of Mari-
copa County, State of Ari-
zona.

Section 8. If the state treasurer has knowledge of the names and addresses of the holders of any of said bonds hereby called for redemption, said state treasurer is further authorized and directed to deposit in the United States Post Office at Phoenix, Arizona, a copy of the foregoing notice of call for redemption, enclosed in a sealed envelope with postage thereon prepaid, addressed respectively to such owner or owners whose names and

addresses are known to said state treasurer, each of which notices shall be mailed, as above provided, by depositing the same in the United States Post Office at least thirty (30) days prior to said last mentioned redemption date.

Section 9. Whenever such outstanding bonds of Maricopa County hereby called for redemption are presented for payment, the state auditor shall endorse on each bond the [225] amount due thereon and shall write across the face of each bond the date of its surrender and the name of the person surrendering the same and shall keep proper record thereof, and when the state treasurer pays any of said bonds of Maricopa County so called for redemption, he shall cancel such bonds by perforating the same and indorsing thereon by writing or stamping in ink the words "Redeemed and Cancelled," with the date of cancellation, and shall thereupon cause said bonds so cancelled to be delivered to the county treasurer of Maricopa County, who shall give his receipt therefor, and such receipt shall be full acquittance to the state treasurer and the state auditor of the State of Arizona for the application of the moneys in the Redemption Fund hereinabove specified, used and applied for the purpose of redeeming said bonds of Maricopa County.

Section 10. This resolution shall take effect immediately.

Passed and Adopted by the Loan Commission-

ers of the State of Arizona, on this 10th day of February, 1943.

SIDNEY P. OSBORN,
Governor.

ANA FROHMILLER,
State Auditor.

JOE HUNT,
State Treasurer.

Loan Commissioners of the State
Arizona.” [226]

XI.

That thereafter, to-wit, on February 12, 1943, the Board of Supervisors of Maricopa County, being advised of said award and the sale of said refunding bonds, duly passed and adopted its resolution approving said sale of said State of Arizona Refunding Bonds and authorized and directed the county treasurer of Maricopa County to join in said notice of redemption of said outstanding bonds of Maricopa County, to the end that interest on said outstanding bonds should cease 30 days from and after the date of publication of said notice of redemption, which resolution of said Board of Supervisors is in words and figures as follows, to-wit:

“RESOLUTION OF THE BOARD OF SUPERVISORS, MARICOPA COUNTY, STATE OF ARIZONA.

Whereas, the Board of Supervisors of Maricopa County heretofore demanded that the Loan Com-

missioners of the State of Arizona redeem \$4,100,000 principal amount of outstanding bonds of Maricopa County in the manner provided by law; and

Whereas, pursuant to said demand the Loan Commissioners have duly authorized and sold \$4,100,000 principal amount of State of Arizona Refunding Bonds and have allocated the proceeds thereof, when the same shall have been paid into the state treasury, to the exclusive purpose of paying and redeeming said [227] outstanding bonds and have directed that notice of such redemption shall be given in the manner provided by law;

Now, Therefore, Be It Resolved by the Board of Supervisors of Maricopa County, State of Arizona, as follows:

Section 1. The proceedings heretofore taken by the Loan Commissioners of the State of Arizona for the purpose of calling and redeeming \$4,100,000 principal amount of Maricopa County bonds described in said proceedings are hereby ratified, confirmed and approved.

Section 2. The Board of Supervisors of Maricopa County, by concurrent action with said Loan Commissioners, hereby authorize and direct the publication and giving of notice of call for redemption in all respects as provided in the resolution of the Loan Commissioners adopted February 10, 1943, which is hereby referred to and by reference incorporated herein and made a part hereof, and the county treasurer of Maricopa County is hereby authorized and directed to do

all acts and take all steps necessary to effect the call and redemption of said outstanding bonds, and the joint signature of said Notice of Redemption by the state treasurer and the county treasurer of Maricopa County is hereby ratified and approved and declared to constitute the concurrent action of this Board of Supervisors of Maricopa County and the Loan Commissioners of the State of Arizona. [228]

Section 3. The county treasurer of Maricopa County is hereby authorized and directed to pay to the state treasurer of the State of Arizona, a sum sufficient to cover the interest accruing on said bonds of Maricopa County so called for redemption from the last interest payment dates, respectively, until thirty (30) days after the date of such notice of redemption, at which time all interest on said outstanding bonds of Maricopa County so called for redemption shall cease.

Passed and Adopted by the Board of Supervisors of Maricopa County, Arizona, this 12th day of February, 1943.

BOARD OF SUPERVISORS
OF MARICOPA COUNTY,
ARIZONA.

By JOHN A. FOOTE,
Chairman.

Attest:

J. E. DE SOUZA,
Clerk."

XII.

That notwithstanding said award and the sale of said State of Arizona refunding bonds and the obvious duty of said Loan Commissioners to execute and deliver said bonds and to apply the proceeds of sale to the redemption of said then outstanding Highway Bonds of Maricopa County, said defendants, on February 12, 1943, advised the Board of Supervisors of Maricopa County, in writing, as such Loan Commissioners, that they would not [229] execute or deliver any of said refunding bonds, and said Loan Commissioners have refused, and do now refuse, to execute or deliver any of said State of Arizona Refunding Bonds; that said purchasers have offered and agreed to pay the purchase price of said State of Arizona Refunding Bonds as set forth in their bid therefor, and the treasurer of the State of Arizona holds, as security for the payment of said purchase price, said cashier's check in the sum of \$205,000, and that said purchasers are ready, able and willing to pay said purchase price into the state treasury of the State of Arizona. That the proceeds of the sale of said State of Arizona Refunding Bonds, when received by the state treasurer, can be and will be applied by said state treasurer to the call and redemption of the outstanding bonds of Maricopa County and interest on said bonds so called for redemption will cease 30 days from and after the date of publication of said notice of redemption, and that the saving in interest to Maricopa County and the taxpayers thereof upon such re-

demption of its outstanding bonds will be in excess of \$10,000 per month or \$120,000 per year. That said defendants, as and constituting the Loan Commissioners of the State of Arizona, base their refusal to execute and deliver said bonds upon the opinion of the Attorney General of the State of Arizona. That said defendants, as and constituting such Loan Commissioners, [230] have advised plaintiff in support of their failure and refusal to execute and deliver said refunding bonds, that the same cannot legally be issued for the following reasons, and each of them:

“1. None of the outstanding Highway Bonds of Maricopa County (for the redemption of which the Refunding Bonds of the State of Arizona are proposed to be issued) are subject to redemption at the option of Maricopa County, or upon call by the Loan Commissioner, prior to their fixed maturity dates. Neither the Loan Commissioner nor the County can compel bondholders to surrender their bonds prior to the fixed maturity dates set forth in the bonds and accordingly if State of Arizona Refunding Bonds were issued at this time (long prior to the fixed maturity dates of your County Highway Bonds) the taxpayers of Maricopa County would be compelled to pay interest both on the County Highway Bonds and also upon the State Refunding Bonds to their detriment. In short, since the holders of the County Highway bonds cannot be compelled to surrender them, they would be entitled to sue and collect the interest accruing thereon until the due dates of the bonds

themselves. If you cannot stop interest from running on the outstanding county bonds no benefit or profit will result to the county from the issuance of State Refunding Bonds. This is clear.

[231]

2. Even if it were assumed that your outstanding County bonds were subject to call for redemption and that the fixed maturity dates of the bonds might be accelerated so that the County bonds could all be made to mature forthwith, there is no legal procedure by which call for redemption may be made under the existing law. Obviously individual and personal notice to each and every bondholder would be required and this you cannot give as it is impossible to ascertain the names of the owners of negotiable bonds which are being transferred every day in the open market. Hence any published notice of redemption would be an idle act and interest would continue to run on the outstanding County bonds and the County would be required to pay the same.

3. The credit of the State of Arizona is at stake and we cannot permit the issuance of illegal bonds. The proposed Refunding Bonds are serial bonds which mature \$300,000 each year 1944 to 1956 and \$200,000 in 1957. These maturities are in direct violation of the statute which require that State Refunding Bonds mature in 25 years, optional after 15 years. Hence, none of these bonds can legally be paid prior to 15 years, which is the minimum period the bonds must run before any of them can be redeemed. Hence the State of Arizona would be

required to default at the fixed maturity dates of the serial bonds and could not legally pay any [232] of them until 1958, or 15 years after the date.

4. No authority exists for the levy or collection of sufficient taxes to pay the principal of the serial refunding bonds as they severally become due. It would require a full period of 25 years before such taxes could be levied each year sufficient to retire these bonds and the State of Arizona would be in default throughout this period due to the statutory limitation upon its amount of taxes which could legally be levied and collected for the payment of the bonds, and the credit of the State irreparably injured.

5. The new refunding bonds, although issued in the form of serial bonds with fixed maturity dates, will in fact be subject to refunding the day after their issuance by the Loan Commissioner and a fraud in effect worked upon the holder of the Refunding Bonds who are entitled to rely upon the fixed maturity dates set forth in the bonds themselves as the exact and only dates upon which their bonds can be paid or redeemed.

6. It is utterly impracticable to issue coupon bonds of the Loan Commissioner which requires the manual and personal signature of the State Treasurer on each of the coupons, or a total of more than 60,000 signatures. No authority of law exists for the State Treasurer to cause such coupons to bear his facsimile signature [233] or to adopt such facsimile signature in lieu of his personal signature."

That said claims of defendants, as and constitut-

ing the Loan Commissioners of the State of Arizona, are, and each of them is, without foundation or merit.

XIII.

That the refusal of said Loan Commissioners to execute and deliver said refunding bonds to the purchasers thereof, as aforesaid, constitutes an unwarranted refusal upon the part of said Loan Commissioners to perform a duty enjoined upon them by the laws of the State of Arizona and because of such refusal the Board of Supervisors of Maricopa County on February 16th, 1943, at a regular meeting of said Board of Supervisors duly called and convened, passed and adopted a resolution authorizing and directing the County Attorney of Maricopa County to institute this original action in mandamus to command said Loan Commissioners to execute and deliver said refunding bonds to the purchasers thereof notwithstanding the refusal of said Loan Commissioners to execute and deliver said refunding bonds to the purchasers thereof, as aforesaid, which resolution of said Board of Supervisors is as follows, to-wit: [234]

“RESOLUTION OF THE BOARD OF SUPERVISORS MARICOPA COUNTY, STATE OF ARIZONA.

Whereas, the Loan Commissioners of the State of Arizona have awarded a contract to Bank of America National Trust & Savings Association, Boettcher and Company, *and Company*, and R. E. Moulton and Company, for the purchase of re-

funding bonds of the State of Arizona in the aggregate principal amount of \$4,100,000 to refund outstanding Maricopa County Highway Bonds in an identical amount; and

Whereas, said Loan Commissioners have notified the Board of Supervisors of Maricopa County, State of Arizona, in writing, that they will refuse to execute and deliver said bonds to said purchasers for the reasons set forth in said notice;

Now Therefore, the County Attorney of Maricopa County is hereby authorized and directed to institute an original suit in mandamus in the Supreme Court of the State of Arizona to command said Loan Commissioners to execute and deliver said bonds to said purchasers pursuant to the demand of the Board of Supervisors of Maricopa County heretofore made upon said Loan Commissioners to refund said outstanding Maricopa County Highway Bonds, for the reason that it will be to the profit and benefit of Maricopa County to refund said outstanding Maricopa County Highway Bonds. [235]

Passed and Adopted by the Board of Supervisors of Maricopa County, Arizona, this 16th day of February, 1943.

BOARD OF SUPERVISORS
OF MARICOPA COUNTY,
ARIZONA.

By JOHN A. FOOTE,
Chairman.

Attest: J. E. DE SOUZA,
Clerk."

XIV.

That the execution and delivery of said refunding bonds to the purchasers thereof for the purpose of redeeming said outstanding Highway Bonds of Maricopa County will inure to the profit and benefit of Maricopa County in that the purchasers of said State of Arizona Refunding Bonds have offered to pay the purchase price therefor in accordance with said bid for bonds bearing interest at the rate of $2\frac{3}{4}$ per cent per annum, payable semi-annually, as compared with interest rates of $5\frac{1}{2}$ per cent and 6 per cent per annum upon the outstanding Highway Bonds of Maricopa County, and, in addition, said purchasers agreed to waive interest upon said State of Arizona Refunding Bonds for a period of 30 days to enable notice of redemption of the outstanding bonds of Maricopa County to be published so that interest on said outstanding bonds would cease to accrue simultaneously [236] with the date of commencement of interest on said State of Arizona Refunding Bonds, and that accordingly upon payment of the purchase price of said State of Arizona Refunding Bonds, the state treasurer would be obligated to publish notice of redemption of said outstanding Highway Bonds of Maricopa County, and on the expiration of 30 days from the date of said publication of notice of redemption, interest on all of said outstanding Maricopa County Highway Bonds would cease and said bonds, upon presentation to the state treasurer of the State of Arizona by the holders thereof would be paid in full. That the

saving in interest to Maricopa County by reason of such sale and delivery of State of Arizona Refunding Bonds and the redemption of said outstanding Highway Bonds pursuant to such notice of redemption will aggregate \$10,000 per month, or \$120,000 per year, and that the execution and delivery of said State of Arizona Refunding Bonds and the publication of notice of redemption of said outstanding Maricopa County Highway Bonds, upon the payment of the purchase price of said refunding bonds, is essential to carry out the duty enjoined by law upon defendants as such Loan Commissioners of the State of Arizona and is in accordance with the resolution of award adopted by said Loan Commissioners, as more particularly alleged in paragraph X hereof, and unless defendants, [237] as such Loan Commissioners, are compelled to execute and deliver said refunding bonds, the sale thereof cannot be consummated or said bonds delivered to the successful bidder or the purchase price thereof paid; that the refusal of said Loan Commissioners to execute and deliver said State of Arizona Refunding Bonds to the purchasers thereof is wholly without authority or sanction of law and that each day that such refusal continues, Maricopa County and the taxpayers thereof are burdened with interest charges accruing on said Maricopa County Highway Bonds at the rate of $5\frac{1}{2}$ per cent and 6 per cent per annum, as against interest at the rate of $2\frac{3}{4}$ per cent per annum which would accrue on said State of Arizona Refunding Bonds when the same are issued and delivered.

That plaintiff has no plain, speedy or adequate remedy in the ordinary course of law, and has no remedy to compel said Loan Commissioners to perform the duty enjoined upon them, and each of them, by law—particularly by Article 4 of Chapter 10, Arizona Code Annotated, 1939—to execute and deliver said State of Arizona Refunding Bonds to the purchaser thereof and to do and perform all necessary acts by law thereunto required of said Loan Commissioners in the redemption of said outstanding Highway Bonds of Maricopa County, save and except by writ of mandamus issued out of this Honorable Court. [238]

XV.

That the circumstances which in the opinion of Plaintiff, Maricopa County, render it proper that the writ of mandamus herein prayed for should issue originally from this Honorable Court in the exercise of its original jurisdiction, rather than from the Superior Court of the County of Maricopa, in the first instance, are as follows, to-wit:

1. After litigation heretofore instituted, the right of Maricopa County to refund its outstanding bonds and to call and redeem the same notwithstanding the fact that said outstanding Highway Bonds of Maricopa County had not yet matured and notwithstanding the fact that none of said bonds provided on its face that it was subject to payment or redemption earlier than the date of payment specified in each bond, had been duly established by judgment and decree of this Hon-

orable Court; that said refunding bonds have now actually been advertised for sale and purchasers ready, able and willing to pay the purchase price thereof have offered to purchase the same bearing interest at only $2\frac{3}{4}$ per cent per annum, and that said Loan Commissioners have awarded said bonds to said purchasers but until the purchase price thereof is paid, the outstanding bonds of Maricopa County cannot be redeemed, with the result that said County is compelled to pay interest [239] at the rate of $5\frac{1}{2}$ per cent and 6 per cent on its outstanding bonds, in lieu of $2\frac{3}{4}$ per cent, the rate of interest borne by the State of Arizona Refunding Bonds; that the issuance of said State of Arizona Refunding Bonds and the redemption of the outstanding Maricopa County Highway Bonds will effect a saving in interest of \$10,000 per month, or \$120,000 per year, and that each day that said Loan Commissioners refuse to execute and deliver said State of Arizona Refunding Bonds effects a loss to Maricopa County and to its taxpayers in excess of \$330. That if plaintiff, Maricopa County, is required to await the decision of the questions herein involved in the ordinary course of trial in the Superior Court and appeal to this Honorable Court, great delay will ensue, to the detriment of plaintiff and its taxpayers.

2. That the bid of said successful bidders is conditioned upon the continued existence of exemption of interest on said Refunding Bonds from federal income taxes; that the Treasury Department of the United States has urged upon the Congress of

the United States to repeal such tax exemption and if the Congress of the United States should repeal such tax exemption, the purchasers of said refunding bonds would be released from their obligation to purchase the same and plaintiff, Maricopa County, would lose the benefit of [240] an advantageous sale of the bonds, and said State of Arizona Refunding Bonds could not thereafter, in the opinion of plaintiff, be sold at such a low interest rate as $2\frac{3}{4}$ per cent per annum, which is only slightly above, to-wit, $\frac{1}{4}$ of 1 per cent, the interest rate borne by Victory Bonds of the United States of America; that if such federal income tax exemption is presently repealed by the Congress of the United States, plaintiff, Maricopa County, may be deprived of the opportunity to refund and redeem, to its benefit and profit at any lower rate of interest, its present outstanding $5\frac{1}{2}$ per cent and 6 per cent Highway Bonds; that the pressure upon the Congress to repeal such tax exemption and the agitation therefor constitutes an urgent and imperative necessity for settling the legal questions raised by the Loan Commissioners which, in the opinion of plaintiff, are without merit.

3. That the issues of law raised in this proceeding are of great public interest and affect the entire State of Arizona and all of the counties, cities and school districts therein, and are such as to warrant and make necessary a consideration and decision thereof by this Honorable Court for the guidance of the public officers of the State and of Maricopa County, and all other public corporations

of the State of Arizona who are similarly situated [241] with respect to the redemption of their outstanding indebtedness.

4. That plaintiff, Maricopa County, is the real party in interest in this proceeding and that defendants, and each of them, are sued herein as public officers, to-wit, as and constituting the Loan Commissioners of the State of Arizona. That the proceedings herein nevertheless affect all taxpayers in Maricopa County and the owners of all property subject to taxation within Maricopa County, as well as the owners and holders of the outstanding Highway Bonds of Maricopa County whose bonds are subject to redemption upon publication of notice of redemption in accordance with the proceedings set forth herein.

Wherefore, plaintiff prays that this Honorable Court issue an alternative writ of mandamus under the seal of this Court commanding defendants, as and constituting the Loan Commissioners of the State of Arizona, to execute and deliver said refunding bonds to the purchasers thereof, to the end that upon payment of the purchase price thereof the state treasurer shall cause notice of redemption of said outstanding bonds of Maricopa County to be given and interest on said outstanding bonds of Maricopa County will cease and terminate 30 days after publication of said notice of redemption, and commanding and requiring said defendants, as and constituting [242] such Loan Commission, to do and perform all other necessary acts required of

said Loan Commissioners by law to redeem said outstanding indebtedness of Maricopa County, or to appear in this Honorable Court on a day certain to show cause why they, and each of them, should not be peremptorily ordered to execute and deliver said refunding bonds to the purchasers thereof, and to do and perform all other necessary acts thereunto required of them by law for the redemption of said outstanding indebtedness of Maricopa County; and for such other and further relief as to this Honorable Court may seem just and meet in the premises.

HAROLD R. SCOVILLE,
County Attorney of Maricopa
County.

LESLIE C. HARDY,
Special Counsel for Maricopa
County. [243]

State of Arizona,
County of Maricopa—ss.

Leslie C. Hardy, first being duly sworn, upon oath deposes and says:

That he is authorized to appear, in association with the County Attorney of Maricopa County, as special counsel for Maricopa County, plaintiff herein, and in such capacity he has read the foregoing petition, knows the contents thereof, and verifies that it is true, except as to matters alleged

therein upon information and belief, and as to such matters, he believes it to be true.

Subscribed and sworn to before me this day
of February, 1943.

Notary Public.

My Commission expires:

[Endorsed]: Pltfs' Exhibit No. One. State of
Washington, et al vs. Maricopa County et al. Case
No. Civ-379-Phx. Admitted and Filed May 17, 1943.
Edward W. Scruggs, Clerk, United States District
Court for the District of Arizona. [244]

In the United States District Court
For the District of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
MONDAY, MAY 17, 1943
(Phoenix Division)

Honorable Dave W. Ling, United States District
Judge, Presiding.

Civ-379

[Title of Cause.]

Defendants' Motion for Summary Judgment under Rule 56 (b) comes on regularly for hearing this day.

John L. Gust, Esquire, is present on behalf of the plaintiffs. Leslie C. Hardy, Esquire and Earl

Anderson, Esquire are present on behalf of the defendants.

On motion of John L. Gust, Esquire,

It Is Ordered that John Spilley, Esquire, Assistant Attorney General of the State of Washington, be admitted specially to practice in this case as an Associate Counsel for the plaintiffs.

On motion of John L. Gust, Esquire,

It Is Ordered that plaintiffs be allowed to file Amended Complaint, herein.

On motion of Leslie C. Hardy, Esquire,

It Is Ordered that the defendants' Answer run as to the Amended Complaint, and that the defendants be allowed to file an Amended Answer to the Amended Complaint.

On motion of John L. Gust, Esquire,

It Is Ordered that plaintiffs be allowed to file Affidavit in Opposition to Motion for Summary Judgment. Said counsel for the defendants states no objection to filing thereof at this time and reserves exception to same as being immaterial.

Defendants' Motion for Summary Judgment is now argued by respective [245] counsel.

Leslie C. Hardy, Esquire now files Amended Answer, and on motion of said counsel, John L. Gust, Esquire, consenting thereto,

It Is Ordered that Motion for Summary Judgment be considered as applying to Amended Complaint and Amended Answer as well as other pleadings filed herein.

Motion for Summary Judgment is now argued by respective counsel.

Plaintiffs' exhibit No. 1, Brief in Supreme Court of Arizona, is now admitted in evidence.

Said Motion is now submitted, and by the Court taken under advisement. [246]

In the United States District Court
for the District of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
FRIDAY, MAY 21, 1943

(Phoenix Division)

Honorable Dave W. Ling, United States District Judge, Presiding.

Civ-379

[Title of Cause.]

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT

It Is Ordered that Defendants' Motion for Summary Judgment be and it is granted. [247]

In the United States District Court
for the District of Arizona

No. Civil-379-Phoenix

STATE OF WASHINGTON and EQUITABLE
LIFE INSURANCE COMPANY OF IOWA,
Plaintiffs,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED.
OGLESBY and PHIL ISLEY, constituting
the Board of Supervisors of Maricopa County,
Arizona; SIDNEY P. OSBORN, Governor,
ANA FROHMILLER, State Auditor, and
JIM BRUSH, State Treasurer, constituting
the Loan Commissioners of the State of Ari-
zona; JIM BRUSH, State Treasurer, and
ANA FROHMILLER, State Auditor of the
State of Arizona,

Defendants.

SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS

Defendants herein having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the motion for summary judgment having been argued to the Court on May 17, 1943 by counsel for the plaintiffs and defendants, whereupon the said motion for summary judgment was submitted to the Court for decision, and the court, being advised of the law and premises, on May 21, 1943 ordered that said

motion for summary judgment be granted in favor of the defendants:

Now, Therefore, in consideration of the premises,

It Is Ordered Adjudged and Decreed, and the Court does hereby Order, Adjudged and Decree that defendants do have summary judgment in their favor against plaintiffs herein, together with the defendants' costs to be taxed by the Clerk of this Court.

Dated this 24 day of May, 1943.

DAVE W. LING

United States District Judge [248]

Service of a true copy of the foregoing proposed form of Summary Judgment in Favor of Defendants is acknowledged this 24 day of May, 1943, and the same is hereby approved as to form.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE

By FRED V. ROSENFELD

Attorneys for Plaintiffs.

[Endorsed]: Filed May 24 1943. [249]

In the United States District Court
for the District of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
MONDAY, MAY 24, 1943

(Phoenix Civil Order Book)

Honorable Dave W. Ling, United States District
Judge, Presiding.

Civ-379

[Title of Cause.]

SUMMARY JUDGMENT IN FAVOR OF
DEFENDANTS

Defendants herein having moved for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure, and the motion for summary judgment having been argued to the Court on May 17, 1943 by counsel for the plaintiffs and defendants, whereupon the said motion for summary judgment was submitted to the Court for decision, and the court, being advised of the law and premises, on May 21, 1943 ordered that said motion for summary judgment be granted in favor of the defendants:

Now, Therefore, in consideration of the premises,

It Is Ordered Adjudged and Decreed, and the Court does hereby Order, Adjudge and Decree that defendants do have summary judgment in their favor against plaintiffs herein, together with the

defendants' costs to be taxed by the Clerk of this Court.

Dated this 24 day of May, 1943.

DAVE W. LING

United States District Judge.

[250]

Phoenix Civil Docket

Civ-379

[Title of Cause.]

DOCKET ENTRIES

Filings and Proceedings

Date 1943

May 24—Enter and file Summary Judgment for defendants together with costs.

Jun 23—File Plaintiffs' Notice of Appeal.

Jun 23—Mail copy of Notice of Appeal to Joe Conway, to Harold R. Scoville and to Leslie C. Hardy, attorneys for defendants. [251]

[Title of District Court and Cause.]

NOTICE OF PLAINTIFFS' REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW

To the Attorneys for the Defendants in the Above
Entitled Cause:

Please Take Notice That on the 7th day of June,

1943, at the hour of 10:00 o'clock A. M., or as soon thereafter as counsel can be heard, the undersigned attorneys for the plaintiffs herein will appear before the Judge of the above entitled Court, and move that the plaintiffs' request for findings of fact and conclusions of law attached hereto be granted.

A memorandum in support of said request is attached thereto.

Dated this 2nd day of June, 1943.

SMITH TROY,
Attorney General of the
State of Washington.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,
201-11 Professional Building,
Phoenix, Arizona,

By J. L. GUST
Attorneys for Plaintiffs [252]

[Title of District Court and Cause.]

PLAINTIFFS' REQUEST FOR FINDINGS OF
FACT AND CONCLUSIONS OF LAW

Come now State of Washington and Equitable Life Insurance Company of Iowa, the plaintiffs in the above entitled action, and request that the court make findings of fact and conclusions of law

upon which the summary judgment in favor of the defendants, entered on the 24th day of May, 1943, is based.

This request is based upon the memorandum hereto attached.

Dated this 2nd day of June, 1943.

SMITH TROY,

Attorney General of the
State of Washington

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE

201-11 Professional Building,
Phoenix, Arizona,

By J. L. GUST

Attorneys for Plaintiffs. [253]

[Title of District Court and Cause.]

MEMORANDUM IN SUPPORT OF REQUEST
FOR FINDINGS OF FACT AND CONCLU-
SIONS OF LAW ON SUMMARY JUDG-
MENT FOR DEFENDANTS

While findings of fact and conclusions of law are ordinarily not mandatory on summary judgment, they are proper and may be made by the court with the consent of the parties, or on its own

motion, and may be helpful to the appellate court on review.

Prudential Ins. Co. v. Goldstein, 5 Federal Rules Service, page 586

In this case, the motion for summary judgment stated a number of grounds. Voluminous briefs were filed on both sides and the argument took a wide range. It would undoubtedly help to limit the range of the argument on appeal if the court would make brief findings and conclusions to indicate the grounds of its decision.

Respectfully submitted,

SMITH TROY,

Attorney General of the
State of Washington

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE

201-11 Professional Building,
Phoenix, Arizona

By J. L. GUST

Attorneys for Plaintiffs [254]

Received copy of within this 2nd day of June,
1943.

LESLIE C. HARDY

Special counsel for Maricopa
Co.

Attorneys for Defendants.

Notice of Plaintiffs' Request for Findings of Fact and Conclusions of Law, and Plaintiffs' Request for Findings of Fact and Conclusions of Law and Memorandum in Support of Request for Findings of Fact and Conclusions of Law on Summary Judgment for Defendants.

[Endorsed]: Filed Jun 2, 1943. [255]

In the United States District Court
for the District of Arizona

April 1943 Term

At Phoenix

MINUTE ENTRY OF
TUESDAY, JUNE 8, 1943

(Phoenix Division)

Honorable David W. Ling, United States District
Judge, Presiding.

Civ-379

[Title of Cause.]

ORDER DENYING REQUEST FOR FIND-
INGS OF FACT AND CONCLUSIONS OF
LAW AND ALSO ORDER AMENDING
SUMMARY JUDGMENT

Plaintiffs' Request for Findings of Fact and Conclusions of Law comes on regularly for hearing this day.

John L. Gust, Esquire, appears as counsel for the plaintiffs. Leslie C. Hardy, Esquire, is present

on behalf of the defendants. Said Request is now argued, and

It Is Ordered that said Request be and it is denied.

On motion of Leslie C. Hardy, Esquire, and John L. Gust, Esquire, consenting thereto,

It Is Ordered that the Clerk be directed to amend Summary Judgment herein by changing the date "May 3, 1943" in line 17 thereof to "May 17, 1943." [256]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice Is Hereby Given that the State of Washington and Equitable Life Insurance Company of Iowa, the plaintiffs, do hereby appeal to the United States Circuit Court of Appeals, for the Ninth Circuit, from that certain judgment rendered in the above entitled court and cause on the 24th day of May, 1943, said judgment being entitled,

“Summary Judgment in Favor of Defendants”.

Dated the 23rd day of June, 1943.

SMITH TROY,

Attorney General, of the
State of Washington,
Olympia, Wash.,

By JOHN SPILLER

Assistant Attorney General
Attorney for the appellant,
State of Washington. [257]

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE &
COOLIDGE,

201-11 Professional Building,
Phoenix, Arizona,

By J. L. GUST

Attorneys for appellant,
Equitable Life Insurance
Company of Iowa.

Received copy of within this 23 day of June,
1943.

LESLIE C. HARDY

Special counsel
Attorneys for

[Endorsed]: Filed Jun 23 1943. [258]

[Title of District Court and Cause.]

BOND ON APPEAL

Know All Men By These Presents:

That we, State of Washington, and Equitable Life Insurance Company of Iowa, the plaintiffs above named, as principals, and Fidelity & Deposit Company of Maryland, as Surety, are held and firmly bound unto Maricopa County; John A. Foote, Ed. Oglesby and Phil Isley, Constituting the Board of Supervisors of Maricopa County, Arizona; Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Jim Brush, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; Jim Brush, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona, defendants above named, in the sum of Two Hundred Fifty (\$250.00) Dollars, lawful money of the United States, to be paid to the said Maricopa County; John A. Foote, [259] Ed. Oglesby and Phil Isley, Constituting the Board of Supervisors of Maricopa County, Arizona; Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Jim Brush, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; Jim Brush, State Treasurer, and Ana Frohmiller, State Auditor, of the State of Arizona, for which payment well and truly to be made we bind ourselves and our successors, firmly by these presents.

The condition of This Obligation Is Such That,

Whereas, a certain Judgment, entitled, "Summary Judgment in Favor of Defendants", was rendered and entered on the 23rd day of May, 1943, in the above entitled court and cause, and

Whereas, the same was in favor of the above named defendants and against the principals on this bond, and

Whereas, the said principals have appealed to the United States Circuit Court of Appeals, for the Ninth Circuit, from said judgment;

Now, Therefore, if the said principals above named shall prosecute their said appeal with effect, and shall pay all costs which have accrued in the United States District Court for the District of Arizona, and which may accrue in the United States Circuit Court of Appeals, for the Ninth Circuit, then this obligation shall be void; otherwise, it shall remain in full force and effect.

In Witness Whereof, said principals and surety

have executed these presents on this 23rd day of June, 1943.

STATE OF WASHINGTON,
EQUITABLE LIFE INSUR-
ANCE COMPANY OF IOWA,

By J. L. GUST

Their Attorney

Principals. [260]

FIDELITY & DEPOSIT COM-
PANY OF MARYLAND,

[Seal] By J. A. MURPHY

Attorney-in-Fact

Surety.

Received copy of within this 23 day of June,
1943.

LESLIE C. HARDY

Special Counsel

Attorneys for

[Endorsed]: Filed Jun 23, 1943. [261]

[Title of District Court and Cause.]

STATEMENT OF POINTS BY PLAINTIFFS
UPON WHICH THEY RELY FOR A RE-
VERSAL OF THE JUDGMENT

I.

The mandamus proceedings in the state court, to which no bondholders were parties, do not bar this

suit which is brought by bondholders to establish their rights.

II.

The fact that counsel for plaintiffs in this suit filed a brief in the first mandamus suit in the state court, in the interest of an unnamed bondholder not a party to this suit, did not make the judgment rendered in that suit binding upon all of the bondholders upon the theory of a class suit.

III.

The law declared by the Supreme Court of Arizona in [262] the mandamus suits to which no bondholders were parties, is not binding upon the federal courts in a suit such as this, which is brought by bondholders to establish their rights, for the reason that the jurisdiction of the federal courts in this case is based primarily upon questions arising under the Constitution and laws of the United States.

IV.

The rule declared by the Supreme Court of the United States in the case of, *Erie Railroad Co. v. Tompkins*, 304 U. S. 64, has no application to this case, for the reason that that rule does not apply to cases arising under the Constitution and laws of the United States.

V.

The decision of the Circuit Court of Appeals of the Ninth Circuit, in the case of *Toole County v. Moody*, 125 Fed. (2d) 498, has no application to this case, for the reason that that decision has no

application to cases arising under the Constitution and laws of the United States.

VI.

That Title I, Chapter 52, Revised Statutes of Arizona, under which defendants claim the right to refund plaintiffs' bonds is a reenactment of an Act of Congress, enacted while Arizona was a Territory, so defendants asserted right to refund depends upon the construction of an Act of Congress.

VII.

That the Supreme Court of Arizona, in the two mandamus suits, did not consider the questions upon which plaintiffs' case is based.

VIII.

The complaint in this case shows that defendants are proposing to call plaintiffs' bonds before their due dates by refunding them under laws which impair the obligation of the [263] contract created by the issuance of plaintiffs' bonds. That a contract was created by the issuance of the bonds is admitted. Plaintiffs claim that under that contract their bonds were authorized to be issued with definite due dates, and were issued with such dates, and that there was no provision in the laws of the State of Arizona at that time authorizing the refunding of such bonds before their due dates, and hence, a contract was created by the issuance of said bonds by which the defendant, Maricopa County, became obligated by virtue of said contract to pay the interest on said bonds at the agreed rate

until their due dates and until they were retired after their due dates.

IX.

That the law under which refunding bonds are proposed to be issued is Article 4 of Chapter 10 of the Arizona Code Annotated, 1939, and said Article first became a law of the State of Arizona as Article 4 of Chapter 60, Arizona Revised Code of 1928. Thus said Act was first enacted by the Legislature of the State of Arizona in 1928, seven or eight years after plaintiffs' bonds were issued, and constitutes a law impairing the obligation of the contract created by the issuance of the bonds.

X.

Article 4 of Chapter 60, Arizona Revised Code of 1928, is a new enactment, and not a reenactment of formerly existing law, and the attempt to call plaintiffs' bonds before their due dates under said Article, as the same has been reenacted in the 1939 Annotated Code, constitutes an attempt to impair the obligation of the contract created by the issuance of plaintiffs' bonds by the use of said Article 4.

XI.

The bonds of the plaintiffs and the coupons attached thereto provide for the payment of interest thereon at the rate therein specified until their respective due dates. The [264] defendants claim the right to stop the payment of the interest by virtue of certain resolutions of the Loan Commissioners of the State of Arizona, and the Board of

Supervisors of Maricopa County. Without these resolutions, plaintiffs' bonds would remain outstanding until their due dates. Hence, it is these resolutions that impair the obligation of the contract created by the issuance of plaintiffs' bonds. Such resolutions adopted by municipal boards or commissions in pursuance of state authority are laws within the meaning of Section 10 of Article One, of the Federal Constitution.

XII.

The bonds of the plaintiffs were issued under Chapter 2, Title 52, Revised Statutes of 1913. Said bonds are made payable upon fixed due dates, in exact compliance with the terms of said chapter. The claim of the defendants that said bonds may be refunded and retired before their due date under Chapter 1 of Title 52, Revised Statutes of 1913, is not well founded, for the reason that the Revised Statutes of 1913, as is shown by Chapter 64 of the Acts of the Third Special Session of the First Legislature of Arizona, constitute merely a compilation of existing statutes, and not a revised code, and any provision in Chapter 1 of Title 52, that is inconsistent with Title 2 of said Chapter 52, was repealed by the enactment of said Chapter 2, as Chapter 20 of the Acts of the Third Special Session of the First Legislature of the State of Arizona, Title 1, Chapter 52, of the Revised Statutes of 1913, having been enacted at sessions of the First Legislature of the State of Arizona, prior to said Third Special Session.

XIII.

That Chapter 1, Title 52, Revised Statutes of Arizona, 1913, insofar as it covered the same subject as Chapter 2, Title 52 of said Revised Statutes, was repealed by the said Chapter 2, [265] by virtue of the provisions of Chapter 19 of the Third Special Session of the First Legislature of the State of Arizona.

XIV.

Chapter 1, Title 52, of the Revised Statutes of 1913, is held by the Supreme Court of Arizona to be merely a continuation of Acts of Congress enacted during early Territorial days, providing for the refunding of state, county and municipal indebtedness, which statutes were by their terms limited to indebtedness existing January 1st, 1897, and that no indebtedness existing after said date was ever authorized to be refunded by the Territorial statutes, and that the enactment of Title 1, Chapter 52, of the Revised Statutes of 1913, by the First Legislature of the State of Arizona, was merely a reenactment of former existing Territorial statutes, and did not authorize the refunding of any indebtedness created since statehood.

XV.

That Chapter 1, Title 52, Revised Statutes of 1913, as it existed from its original enactment in 1912, to the enactment of the Arizona Revised Code of 1928, provided that bonds issued thereunder should be obligations of the State or Arizona, and hence, could not be held operative as to county,

municipal or school district indebtedness, because, under the Constitution of Arizona, the State of Arizona was not permitted to create indebtedness for such purpose.

XVI.

That the provisions of plaintiffs' bonds constitute the contract between Maricopa County and the holders of said bonds for the reason that after their form was determined and had become a matter of public record, the legislature of the State of Arizona ratified and approved said bonds, and ratified and approved the contract entered into by the county with the original purchasers, and that said ratifying acts excluded all [266] application of Chapter 1, Title 52, Revised Statutes of 1913, from said bonds.

XVII.

That the entire history of Title 1, Chapter 52, Revised Statutes of 1913, both before the enactment of said chapter and after the enactment of said chapter, shows conclusively that said chapter was never intended to apply to bonds issued under Chapter 2, Title 52, Revised Statutes of 1913.

XVIII.

That the several acts enacted by the State of Arizona, providing for the issuance of refunding bonds, constitute an interpretation of Chapter 1, Title 52, Revised Statutes of 1913, precluding the calling of outstanding bonds before their due dates by use of the refunding provisions of said chapter.

XIX.

That the decisions of the Supreme Court of Arizona, in the mandamus suits, if considered as upholding defendants' contention, depart so far from recognized rules of interpretation of statutes as to deprive plaintiffs of their property without due process of law.

XX.

The complaint in this case states a proper case for a declaratory judgment suit.

Dated: June 23, 1943.

STATE OF WASHINGTON,

EQUITABLE LIFE INSUR-
ANCE COMPANY OF IOWA

By J. L. GUST

Their Attorney

Received copy of within this 23 day of June, 1943.

LESLIE C. HARDY,
Special Counsel

[Endorsed]: Filed Jun 23 1943. [267]

[Title of District Court and Cause.]

DESIGNATION OF PORTIONS OF THE REC-
ORD AND PROCEEDINGS TO BE CON-
TAINED IN RECORD ON APPEAL

Come now the above named plaintiffs and appellants, and designate the following portions of the record and proceedings to be contained in the record on appeal:

1. Amended Complaint.
2. Amended Answer of Defendants to Amended Complaint.
3. Notice of Motion for Summary Judgment.
4. Motion for Summary Judgment.
5. Affidavit of Leslie C. Hardy, in support of Motion for Summary Judgment.
6. Affidavit of Earl Anderson, in support of Motion for Summary Judgment. [268]
7. Affidavit in Opposition to Motion for Summary Judgment, with certified copy of Acts of First Legislature of Arizona attached thereto.
8. Plaintiffs' Exhibit 1, being Petition for Writ of Mandamus, in the case of Maricopa County, etc., v. Sidney P. Osborn, et al, in the Supreme Court of Arizona.
9. Summary Judgment in favor of defendants, signed by the court and filed in said cause.
10. The Clerk's notation of Judgment in the civil docket.
11. Final Judgment, as entered by the Clerk in the Civil Order book.
12. Notice of Plaintiffs' Request for Findings of Fact and Conclusions of Law.
13. Plaintiffs' Request for Findings of Fact and Conclusions of Law.
14. All Minute Entries made by the Clerk in said cause.
15. Notice of Appeal.
16. Appeal Bond.
17. This Designation.
18. Statement of Points by Plaintiffs upon which they Rely for a Reversal of the Judgment.

Dated this 23rd day of June, 1943.

STATE OF WASHINGTON and
EQUITABLE LIFE INSUR-
ANCE COMPANY OF IOWA,
Plaintiffs and Appellants,

JOHN SPILLER

By J. L. GUST
GUST ROSENFELD DIVEL-
BESS ROBINETTE & COOL-
IDGE
Their Attorneys

Received copy of within this 23 day of June, 1943.
LESLIE C. HARDY,
Special Counsel

[Endorsed]: Filed Jun 23 1943. [269]

[Title of District Court and Cause.]

DEFENDANTS' DESIGNATION OF ADDI-
TIONAL PORTION OF RECORD AND
PROCEEDINGS TO BE CONTAINED
IN RECORD OF APPEAL AS PROVIDED
BY RULE 75(a) OF FEDERAL RULES OF
CIVIL PROCEDURE

Come Now the above named defendants and ap-
pellees and designate the following additional por-
tions of the record and proceedings to be contained
in the record on appeal herein:

Original Complaint, filed March 31, 1943.

Dated this 25th day of June, 1943.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa
County

Attorneys for the Defendants Maricopa County
and the Officials of Maricopa County,
Arizona.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney Gen-
eral

Attorneys for the Defendants Who Are Offi-
cials of the State of Arizona.

Received copy of the within designation of Addi-
tional Portion of Record and Proceedings, this 25th
day of June, 1943.

JOHN SPILLER

JOHN L. GUST

Attorneys for Plaintiffs.

[Endorsed]: Filed Jun 25 1943. [270]

In the United States District Court
For the District of Arizona

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD

United States of America
District of Arizona—ss.

I, Edward W. Scruggs, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said court, including the records, papers and files in the case of State of Washington, et al, Plaintiffs, versus Maricopa County, et al, Defendants, numbered Civ-379 Phoenix, on the docket of said court.

I further certify that the attached pages, numbered 1 to 270, inclusive, contain a full, true and correct transcript of all of the proceedings had in said cause and of all the papers filed therein, together with the endorsements of filing thereon, called for in Plaintiffs' Designation of Portions of the Record and Proceedings to be Contained in Record on Appeal and in Defendants' Designation of Additional Portion of Record and Proceedings to be Contained in Record on Appeal, as the same appear from the originals of record remaining on file in my office as such Clerk in the City of Phoenix, State and District aforesaid.

I further certify that the Clerk's fee for preparing and certifying this said transcript of record

amounts to the sum of \$45.75 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said court this 12th day of July, 1943.

[Seal]

EDWARD W. SCRUGGS,

Clerk

By WM. H. LOVELESS

Chief Deputy Clerk. [271]

[Endorsed]: No. 10493. United States Circuit Court of Appeals for the Ninth Circuit. State of Washington and Equitable Life Insurance Company of Iowa, Appellants, vs. Maricopa County; John A. Foote, Ed. Oglesby and Phil Isley, Constituting the Board of Supervisors of Maricopa County, Arizona; Sidney P. Osborn, Governor, Ana Frohmiller, State Auditor, and Jim Brush, State Treasurer, Constituting the Loan Commissioners of the State of Arizona; Jim Brush, State Treasurer, and Ana Frohmiller, State Auditor of the State of Arizona, Appellees. Transcript of Record. Upon Appeal from the District Court of the United States for the District of Arizona.

Filed July 15, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
For the Ninth Circuit

No. 10493

STATE OF WASHINGTON and EQUITABLE
LIFE INSURANCE COMPANY OF IOWA,

Appellants,

vs.

MARICOPA COUNTY; JOHN A. FOOTE, ED
OGLESBY and PHIL ISLEY, constituting
the Board of Supervisors of Maricopa County,
Arizona; SIDNEY P. OSBORN, Governor,
ANA FROHMILLER, State Auditor, and
JIM BRUSH, State Treasurer, Constituting
the Loan Commissioners of the State of Ari-
zona; JIM BRUSH, State Treasurer, and ANA
FROHMILLER, State Auditor of the State of
Arizona,

Appellees.

STIPULATION CONCERNING TRANSCRIPT
OF RECORD ON APPEAL

Whereas, the transcript of record on the appeal herein, certified by the Clerk of the United States District Court for the District of Arizona, discloses from the designation of the contents of record on said appeal that the Clerk of said District Court was requested to transmit to said Circuit Court of Appeals, among other documents, the original complaint filed in said action in the United

States District Court as well as the Amended Complaint filed in said action,

It Is Therefore Now Stipulated by the undersigned counsel for the appellants and appellees herein, that said original complaint transmitted from the United States District Court to the Circuit Court of Appeals for the Ninth Circuit need not be printed as a part of the transcript of record in said Circuit Court of Appeals but shall be considered as a part of the record on appeal as an original exhibit and may be referred to by either of the parties upon said appeal.

Dated at Phoenix, Arizona, this 2nd day of July, 1943.

TROY SMITH

Attorney General of State of
Washington

By JOHN SPILLER

Deputy

GUST ROSENFELD DIVEL-
BESS ROBINETTE & COOL-
IDGE

By J. L. GUST,

Attorneys for Appellants

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa
County

Attorneys for Appellees Maricopa County and
the Officials of Maricopa County, Arizona.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney General

Attorneys for Appellees who are officials of the
State of Arizona.

[Endorsed]: Filed July 15, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL AND DESIGNATION OF THE
PARTS OF THE RECORD WHICH AP-
PELLANTS THINK NECESSARY FOR
CONSIDERATION OF SAID POINTS

Comes Now the State of Washington and Equitable Life Insurance Company of Iowa, appellants in the above-entitled case, and hereby formally adopt the statement of points by plaintiffs upon which they rely for a reversal of the judgment filed by the appellants as plaintiffs in the United States District Court for the District of Arizona, which is a part of the record forwarded to this court by the Clerk of the United States District Court, as and for a statement of the points on which appellants intend to rely on this appeal, required to be filed in this court under Subdivision 6 of Rule 19 of the Rules of this court, and said appel-

lants hereby designate to be printed the whole of the record forwarded to this court by the Clerk of the United States District Court, excepting only the original complaint filed March 31, 1943, which need not be printed under the stipulation entered into by counsel for appellants and appellees.

Dated this 17th day of July, 1943.

SMITH TROY,

Attorney General, of the State of
Washington, Olympia,
Washington

By JOHN SPILLER

Assistant Attorney General
Attorney for the appellant,
State of Washington.

GUST, ROSENFELD, DIVEL-
BESS, ROBINETTE & COOL-
IDGE

201 Professional Building,
Phoenix, Arizona,

By J. L. GUST

Attorneys for appellant,
Equitable Life Insurance
Company of Iowa.

Service of the above designation of points upon which appellants intend to rely and designation of parts of the record to be printed is hereby acknowledged this 17th day of July, 1943.

HAROLD R. SCOVILLE

Maricopa County Attorney

LESLIE C. HARDY

Special Counsel for Maricopa
County

Attorneys for the Defendants Maricopa County
and the Officials of Maricopa County, Ari-
zona.

JOE CONWAY

Attorney General

EARL ANDERSON

Chief Assistant Attorney Gen-
eral

Attorneys for the Defendants Who Are Offi-
cials of the State of Arizona.

[Endorsed]: Filed July 20, 1943. Paul P.
O'Brien, Clerk.